FEDERAL REGISTER

VOLUME 12 NUMBER 157

Washington, Tuesday, August 12, 1947

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

PART 1—ADMINISTRATIVE REGULATIONS

DELEGATION OF AUTHORITY TO DETERMINE EQUITABLE ADJUSTMENTS UNDER SALES OR TRANSFERS OF SURPLUS PROPERTY

The Controller, Production and Marketing Administration, is hereby given authority and is designated as representative of the Secretary of Agriculture to:

Consider requests for equitable adjustment, in accordance with contract provisions therefor, arising out of sale or transfer of commodities which have been declared surplus pursuant to the Surplus Property Act of 1944, and authorize such adjustment as in his sound discretion he determines to be equitable under the circumstances. Each adjustment shall be based on adequate proof of facts; shall be in the form of a written determination supported by written findings of fact; shall be conditioned upon the contractor's releasing any and all claims he may have against the Government under the contract involved in the adjustment; and shall be referred to the Solicitor's Office for review of legal problems, if any, involved in the adjustment.

The designation of the Assistant Administrator for Fiscal and Inventory Control, Production and Marketing Administration, to determine equitable adjustment under sales or transfer of surplus property, bearing No. 2—Admin. and dated July 2, 1946,[1] is terminated, said office having ceased to exist in accordance with Memorandum No. 1188 of the Secretary of Agriculture, dated March 19, 1947, but any proceedings begun by the said Assistant Administrator under the designation of July 2, 1946, may be continued by the Controller, Production and Marketing Administration.

(58 Stat. 765, 50 U. S. C., App. Sup. 1611 et seq., 10 F. R. 3764, 14064; 11 F. R. 7970; 12 F. R. 863, 2249)

[1] Not published in the FEDERAL REGISTER.

Done at Washington, D. C., this 7th day of August 1947.

[SEAL] CHARLES F. BRANNAN,
Acting Secretary of Agriculture.

[F. R. Doc. 47-7540; Filed, Aug. 11, 1947; 8:53 a. m.]

Chapter XXI—Organization, Functions, and Procedure

Subchapter C—Production and Marketing Administration

PART 2301—OFFICE OF THE ADMINISTRATOR

PROCEDURES CONCERNING SURPLUS PROPERTY

Paragraph (b) *Surplus Property* in § 2301.13 *Procedures* (11 F. R. 177A-261) is amended by the addition of a sentence at the end thereof as follows: "The Controller, Production and Marketing Administration, is the representative of the Secretary to consider requests for equitable adjustment, in accordance with contract provisions therefor, arising out of sale or transfer of surplus property and to authorize such adjustment as in his sound discretion he determines to be equitable under the circumstances."

(58 Stat. 765, 50 U. S. C., App. Sup. 1611 et seq., 10 F. R. 3764, 14064; 11 F. R. 7970; 12 F. R. 863, 2249)

Issued this 7th day of August 1947.

[SEAL] CHARLES F. BRANNAN,
Acting Secretary of Agriculture.

[F. R. Doc. 47-7541; Filed, Aug. 11, 1947; 8:45 a. m.]

TITLE 6—AGRICULTURAL CREDIT

Chapter II—Production and Marketing Administration (Commodity Credit)

PART 246—SWEETPOTATOES

STATEMENT OF POLICY

The United States Department of Agriculture will support the price of the 1947 crop of sweetpotatoes from September 1, 1947 to April 30, 1948. If price

(Continued on p. 5443)

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such in parentheses.

[1] P. L. O. 388.
[2] P. L. O. 390.
[3] P. L. O. 387.
[4] P. L. O. 389.

CODIFICATION GUIDE—Con.

[1] P. L. O. 387.
[2] P. L. O. 389.
[3] P. L. O. 391.

support operations become necessary to give producers a price of not less than 90 percent of parity, such support will be accomplished through purchases or by diversion to other than normal channels of trade, including industrial or livestock feed outlets. (For procedures with respect to purchase and diversion programs, see 7 CFR (1946 Sup.) 2305.14, 2305.16) Commodity loans will not be used as a method of price support. After November 15, 1947, the Department may limit the rate of deliveries by time periods.

Purchases will be made from growers, from authorized agents, and dealers who are certified as having agreed to pay growers not less than the applicable support prices or their equivalent for all sweetpotatoes purchased and are licensees under the Perishable Agricultural Commodities Act.

Support prices are for U. S. Extra No. 1 and U. S. No. 1 grades, packed in specified containers, loaded f. o. b. carrier at shipping point in carlots or trucklots. If need for support of U. S. No. 2's develops in any area, support prices, terms, and conditions for them will be announced at that time.

In any area where a quarantine is imposed, price support will cease 15 days prior to the date the quarantine is to become effective.

Schedule of support prices for sweetpotatoes[1] produced in 1947 for the period Sept. 1, 1947 through Apr. 30, 1948

Grade	Sept. 1–Nov. 15 per bu.[2]	Nov. 16–Dec. 31 per bu.[2]	Jan. 1–Apr. 30 per bu.[2]
U. S. Extra No. 1	$1.75	$2.00	$2.25
U. S. No. 1	1.50	1.75	2.15

[1] Includes sweetpotatoes of the Porto Rico, Jersey, Nancy Hall, Golden Triumph, and other varieties of similar characteristics. For other varieties the purchase price will be 50 cents per bushel less.
[2] Sweetpotatoes must be packed in standard crates, bushel hampers and bushel baskets f. o. b. cars or trucks in carlots or trucklots. At the option of the Department deliveries of sweetpotatoes may be made in bulk or some other stage of preparation in which case the purchase prices will be less than the prices specified above by the value of the marketing services not performed, as determined by the Administrator of the Production and Marketing Administration.

(Sec. 4, 55 Stat. 498, as amended; 15 U. S. C. Sup. 713 (a)–8 (a), 9 F. R. 4837)

Dated this 7th day of August 1947.

[SEAL] CHARLES F. BRANNAN,
Acting Secretary of Agriculture.

[F R. Doc. 47-7542; Filed, Aug. 11, 1947; 8:53 a. m.]

TITLE 10—ARMY WAR DEPARTMENT

Chapter V—Military Reservations and National Cemeteries

PART 501—LIST OF EXECUTIVE ORDERS, PROCLAMATIONS AND PUBLIC LAND ORDERS AFFECTING MILITARY RESERVATIONS

NEW MEXICO AND CALIFORNIA

CROSS REFERENCE: For revocation of Public Land Orders 9 and 21 as amended by Executive 9526, which set aside public lands in New Mexico for the use of the War Department as practice bombing ranges as noted in the tabulation in § 501.1, see Public Land Orders 387 and 389 in Title 43, *infra*. For revocation of Executive Order 8865, as amended by Executive Order 9526, which sets aside lands in California for combat firing ranges and maneuver purposes, see Public Land Order 388, *infra*.

Chapter VII—Personnel

PART 700—ARMY NURSES, DIETITIANS AND PHYSICAL THERAPY AIDES

PART 709—PRESCRIBED SERVICE UNIFORM

MISCELLANEOUS AMENDMENTS

1. Amend the last sentence of § 700.15 (e) (1) to read as follows:

§ 700.15 *Appointment of female officers to the Army Nurse Corps and Women's Medical Specialist Corps, Regular Army.* * * *

(e) *Method of applying.* (1) * * * Applications forwarded or postmarked after 30 September 1947 will be returned without action.

[WD Cir. 113, May 3, 1947 as amended by Cir. 199, July 29, 1947] (40 Stat. 879, 41 Stat. 767; Pub. Law 36, 80th Congress; 10 U. S. C. 161–164)

2. In § 709.30 add paragraphs (p) (q) and (r) as follows:

§ 709.30 *Brassards.* * * *

(p) *Airdrome officer.* The letters "AO" in golden orange letters 2½ inches in height on an ultramarine blue background.

(q) *Flight traffic clerk.* The words "Flight Traffic" in golden orange letters 1 inch in height on an ultramarine blue background.

(r) *Mourning.* Plain black.

[AR 600-35, March 31, 1944 as amended by WD Cir. 197, July 26, 1947] (R. S. 1296; 10 U. S. C. 1391)

[SEAL] EDWARD F. WITSELL,
Major General,
The Adjutant General.

[F. R. Doc. 47-7563; Filed, Aug. 11, 1947; 8:48 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

PART 1—POLICIES

The Commission, on July 16, 1947, amended its statement of policy, by deleting § 1.4 *Wool Products Labeling Act*, so that said statement of policy Part 1, Policies (16 CFR, Cum. Supp.) shall read as follows, effective on date of publication thereof in the FEDERAL REGISTER.

Sec.
1.1 Status of applicant or complainant.
1.2 Policy as to private controversies.
1.3 Settlement of cases by stipulation.
1.4 Cooperation with other agencies.

AUTHORITY: §§ 1.1 to 1.4, inclusive, issued under sec. 6, 38 Stat. 721, 60 Stat. 237; 15 U. S. C. 46, 5 U. S. C. Sup. 1001 et seq.

§ 1.1 *Status of applicant or complainant.* The so-called "applicant" or complaining party has never been regarded as a party in the strict sense. The Commission acts only in the public interest. It has always been and now is the rule not to publish or divulge the name of an

applicant or complaining party, and such party has no legal status before the Commission except where allowed to intervene as provided by the statute.

§ 1.2 *Policy as to private controversies.* It is the policy of the Commission not to institute proceedings against alleged unfair methods of competition or unfair or deceptive acts or practices where the alleged violation of law is a private controversy redressable in the courts, except where said practices tend to affect the public. In cases where the alleged injury is one to a competitor only and is redressable in the courts by an action by the aggrieved competitor and the interest of the public is not involved, the proceeding will not be entertained.

§ 1.3 *Settlement of cases by stipulation.* Whenever the Commission shall have reason to believe that any person has been or is using unfair methods of competition or unfair or deceptive acts or practices in commerce, and that the interest of the public will be served by so doing, it may withhold service of complaint and extend to the person opportunity to execute a stipulation satisfactory to the Commission, in which the person, after admitting the material facts, promises and agree to cease and desist from and not to resume such unfair methods of competition or unfair or deceptive acts or practices. All such stipulations shall be matters of public record, and shall be admissible as evidence of prior use of the unfair methods of competition or unfair or deceptive acts or practices involved in any subsequent proceeding against such person before the Commission. It is not the policy of the Commission to thus dispose of matters involving intent to defraud or mislead; false advertisement of food, drugs, devices, or cosmetics which are inherently dangerous or where injury is probable; suppression or restraint of competition through conspiracy or monopolistic practices; violations of the Clayton Act; violations of the Wool Practices Labeling Act of 1939 or the rules promulgated thereunder or where the Commission is of the opinion that such procedure will not be effective in preventing continued use of the unlawful method, act, or practice. The Commission reserves the right in all cases, for any reasons which it regards as sufficient, to withhold this privilege.

§ 1.4 *Cooperation with other agencies.* (a) In the exercise of its jurisdiction with respect to practices and commodities concerning which other federal agencies also have functions, it is the established policy of the Commission to cooperate with such agencies to avoid unnecessary overlapping or possible conflict of effort.

(b) It is the policy of the Commission not to institute proceedings in matters such as the labeling or branding of commodities where the subject matter of the questioned portion of the labeling or branding used is, by specific legislation, made a direct responsibility of another federal agency.

(c) In proceedings involving false advertisements of food, drugs, cosmetics, and devices as defined in section 15 of the Federal Trade Commission Act, account is taken of the labeling requirements of the Food and Drug Administration in any corrective action applied to the advertising. In the case of advertisements of food, drugs, cosmetics, or devices which are false because of failure to reveal facts material in the light of the advertising representations made or material with respect to the consequences which may result from the use of the commodity, it is the policy of the Commission to proceed only when the resulting dangers may be serious or the public health may be impaired, and in such cases to require that appropriate disclosure of the facts be made in the advertising.

Promulgated as of this date in pursuance of the action of the Federal Trade Commission under date of July 16, 1947, effective on date of publication thereof in the FEDERAL REGISTER.

By direction of the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 47-7523; Filed, Aug. 11, 1947; 8:46 a. m.]

PART 2—RULES OF PRACTICE

The Commission, on July 16, 1947, amended § 2.8 *Answers,* § 2.10 *Motions,* § 2.21 *Proposed findings and conclusions before trial examiner* § 2.22 *Trial examiner's recommended decision in adversary proceedings,* § 2.25 *Commission's adjudication, and* § 2.28 *Trade practice conference procedure,* of its rules of practice (§§ 2.1 to 2.29, inclusive) and on August 6, 1947 amended § 2.20 thereof *Appeals to the Commission from rulings of trial examiners* so that said rules of practice, Part 2, Rules of Practice (16 CFR, Cum. Supp.) shall read as follows, effective on date of publication thereof in the FEDERAL REGISTER.

Sec.

AUTHORITY: §§ 2.1 to 2.29, inclusive, issued under sec. 6, 38 Stat. 721, 60 Stat. 237; 15 U. S. C. 46, 5 U. S. C. Sup. 1001 et seq.

NOTE: In §§ 2.1 to 2.29, inclusive, the numbers to the right of the decimal point correspond with the respective rule numbers (I to XXIX) in the rules of practice, Federal Trade Commission, of even date herewith.

§ 2.1 *The Commission*—(a) *Offices.* (1) The principal office of the Commission is at Washington, D. C.

(2) All communications to the Commission must be addressed to Federal Trade Commission, Washington 25, D. C., unless otherwise specifically directed.

(3) Branch offices are maintained at New York, Chicago, San Francisco, Seattle, and New Orleans.

(4) Their addresses are: Federal Trade Commission, Room 501, 45 Broadway, New York 6, N. Y., Federal Trade Commission, 1118 New Post Office Building, 433 West Van Buren Street, Chicago 7, Ill., Federal Trade Commission, Federal Office Building, Room 133, Civic Center, San Francisco 2, Calif., Federal Trade Commission, 447 Federal Office Building, Seattle 4, Wash., Federal Trade Commission, Room 652, Federal Office Building, 600 South Street, New Orleans 12, La.

(b) *Hours.* Offices are open on each business day from 8:30 a. m. to 5 p. m.

(c) *Sessions.* (1) The Commission may meet and exercise all its powers at any place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

(2) Sessions of the Commission for hearings will be held as ordered by the Commission.

(3) Sessions of the Commission for the purpose of making orders and for transaction of other business unless otherwise ordered, will be held at the principal office of the Commission at Pennsylvania Avenue at Sixth Street, Washington, D. C., on each business day at 10 a. m.

(d) *Quorum.* A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(e) *Public information.* All requests, whether for information or otherwise, and submittals shall be addressed to the principal office of the Commission.

§ 2.2 *The Secretary.* The Secretary is the executive officer of the Commission and shall have the legal custody of its seal, papers, records and property; and all orders of the Commission shall be signed by the Secretary or such other person as may be authorized by the Commission.

§ 2.3 *Investigational hearings.* (a) Investigational hearings, as distinguished from formal hearings in adversary proceedings, shall be held only as ordered by the Commission and shall be held before the Commission, one or more of its members, or a duly designated representative for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to subjects within the investigational jurisdiction of the Commission. Unless otherwise ordered by the Commission, such hearings shall be public. Hearings shall be stenographically reported and a transcript

thereof shall be made which shall be a part of the record of the investigation.

(b) Every person required to attend and testify or submit documents or other data shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript of such person's testimony or documents produced.

§ 2.4 *Applications for complaint.* (a) Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

(b) Such application for complaint shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

§ 2.5 *Complaints.* (a) Whenever the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and in case of violation of the Federal Trade Commission Act, if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue and serve upon the proper parties a complaint stating its charges and containing a notice of a hearing upon a day and at the place therein fixed, at least thirty (30) days after the service of said complaint.

(b) Upon request made within fifteen (15) days after service of the complaint, any party shall be afforded opportunity for the submission of facts, arguments, offers of settlement or proposals of adjustment where time, the nature of the proceeding and the public interest permit, and due consideration shall be given to the same. Such submission shall be in writing. The filing of such request shall not operate to delay the filing of the answer.

§ 2.6 *Service.* (a) Complaints, orders, and other processes of the Commission, and briefs in support of the complaint, will be served by the Secretary of the Commission by registered mail, except when service by other method shall be specifically ordered by the Commission, by registering and mailing a copy thereof addressed to the person, partnership, or corporation to be served at his or its principal office or place of business. When proceeding under the Federal Trade Commission Act service may also be made at the residence of the person, partnership, or corporation to be served.

(b) When service is not accomplished by registered mail, complaints, orders, or other processes of the Commission, and briefs in support of the complaint, may be served by anyone duly authorized by the Commission, or by any examiner of the Commission,

(1) By delivering a copy of the document to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or

(2) By leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation. When proceeding under the Federal Trade Commission Act service may also be made at the residence of the person, partnership, or corporation to be served.

(c) The return post-office receipt for said complaint, order, or other process or brief registered and mailed as aforesaid, or the verified return by the person serving such complaint, order, or other process or brief, setting forth the manner of said service, shall be proof of the service of the document.

§ 2.7 *Appearance.* (a) Any individual or member of a partnership which is a party to any proceeding before the Commission may appear for himself, or such partnership upon adequate identification, and a corporation or association may be represented by a bona fide officer of such corporation or association upon a showing of adequate authorization therefor.

(b) A party may also appear by an attorney at law possessing the requisite qualifications, as set forth in this section, to practice before the Commission.

(c) Attorneys at law who are admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the United States Court of Appeals for the District of Columbia, or the District Court of the United States for the District of Columbia, may practice before the Commission.

(d) No register of attorneys who may practice before the Commission is maintained. No application for admission to practice before the Commission is required. A written notice of appearance on behalf of a specific party or parties in the particular proceeding should be submitted by attorneys desiring to appear for such specific party or parties, which notice shall contain a statement that the attorney is eligible under the provisions of this section. Any attorney practicing before the Commission or desiring so to practice may, for good cause shown, be disbarred or suspended from practicing before the Commission, but only after he has been afforded an opportunity to be heard in the matter.

(e) No former officer, examiner, attorney, clerk, or other former employee of this Commission shall appear as attorney or counsel for or represent any party in any proceeding resulting from any investigation, the files of which came to the personal attention of such former officer, examiner, attorney, clerk, or other former employee during the term of his service or employment with the Commission.

§ 2.8 *Answers.* (a) In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

(b) Ten (10) copies of answers shall be furnished. The original of all answers shall be signed in ink, by the respondent or by his attorney at law. Corporations or associations shall file answers through a bona fide officer or by an attorney at law. Answers shall show the office and post-office address of the signer.

(c) Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

(d) If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and the Commission may proceed to make its findings as to the facts and conclusions based upon such answer and enter its order disposing of the matter without any intervening procedure. The respondent may, however, reserve in such answer the right to other intervening procedure, including a hearing upon proposed conclusions of fact or law, in which event he may, in accordance with § 2.24, file his brief directed solely to the questions reserved.

§ 2.9 *Intervention.* (a) So far as the responsible conduct of public business shall permit, any interested person, after leave granted, may appear before the Commission, or its delegated responsible officer, for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding or in connection with any function of the Commission.

(b) Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested.

(c) The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem proper.

§ 2.10 *Motions.* (a) Motions before the Commission or the trial examiner shall state briefly the purpose thereof and all supporting affidavits, records, and other papers, except such as have been previously filed, shall be filed with such motions and clearly referred to therein.

(b) Motions in any proceeding before a trial examiner which relate to the introduction or striking of evidence, to matters of procedure, or to any other matters coming within the scope of the trial examiner's authority shall be made to the trial examiner and shall be ruled on by him. All other motions in any proceeding, except as otherwise provided in this part, shall be addressed to and shall be ruled on by the Commission, but in the case of motions to dismiss for alleged failure of proof based upon testimony taken before a trial examiner, the motion will be referred to the trial examiner for report and recommendation

before a ruling is made by the Commission.

(c) Ten (10) copies of all written motions shall be filed with the Commission.

(d) Prompt notice shall be given of the granting or denial, in whole or in part, of any written application, petition, or other request of any interested person made in connection with any formal proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of grounds.

§ 2.11 *Continuances and extensions of time.* (a) Except as otherwise expressly provided by law, the Commission, for cause shown, may extend any time limits prescribed in this part. A hearing before a trial examiner shall begin at the time and place ordered by the Commission, but thereafter the course of the hearing shall be regulated by the trial examiner subject to the provisions of § 2.20.

(b) Applications for continuances and extensions of time should be made prior to the expiration of time prescribed by this part.

§ 2.12 *Documents*—(a) *Filing.* All documents required to be filed with the Commission in any proceeding shall be filed with the Secretary of the Commission.

(b) *Title.* Documents shall clearly show the docket number and title of the proceeding.

(c) *Copies.* Documents, other than correspondence, shall be filed in triplicate, except as otherwise specifically required by this part.

(d) *Form.* (1) Documents not printed shall be typewritten, on one side of paper only; letter size, eight (8) inches by ten and one-half (10½) inches; left margin, one and one-half (1½) inches; right margin, one (1) inch.

(2) Documents may be printed, in ten (10) or twelve (12) point type, on good, unglazed paper, of the dimensions and with the margins above specified.

(3) Documents shall be bound at left side only.

(4) The originals of all answers, briefs, motions, and other documents shall be signed in ink by the respondent or his duly authorized attorney. Where the respondent is an individual or a partnership, the originals of said documents shall be signed by said individual or by one of the partners, or by his or its attorney. Where the respondent is a corporation, the originals of said documents shall be signed under the corporate name by a duly authorized official of such corporation, or by its attorney. Where the respondent is an association, the originals of said documents shall be signed under the association name for said association by a duly authorized official of such association, or by its attorney.

(5) One copy of a brief or other document required to be printed shall be signed as the original.

§ 2.13 *Admission as to facts and documents.* (a) At any time after answer has been filed counsel or parties in any controversy may serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or the admission of the truth of any relevant matters of facts set forth in such documents.

(b) Copies of the documents shall be delivered with the request unless copies have already been furnished. Each of the matters on which an admission is so requested shall be deemed admitted unless, within a period designated within the request, not less than ten days after service thereof or within such further time as the Commission or the trial examiner may allow on motion and notice, the party so served serves upon the party making the request, a sworn statement either denying specifically the matters of which an admission is requested, or setting forth in detail the reasons why he can neither truthfully admit nor deny those matters. Service required hereunder may be made upon a respondent either by registering and mailing or by delivering a copy of the documents to be served to the respondent or his attorney, or by leaving a copy at the principal office or place of business of either. Service upon the attorney supporting the complaint may be either by registering and mailing or by delivering a copy of the documents to be served to such attorney.

§ 2.14 *Trial examiners.* (a) All hearings pursuant to formal complaints shall be presided over by the Commission, a member of the Commission, or by a trial examiner appointed by the Commission and duly qualified as an examiner or hearing officer within the meaning of the Administrative Procedure Act. So far as practicable trial examiners shall be assigned to cases in rotation.

(b) Subject to the published rules of the Commission and within its authority, officers presiding at hearings shall have the following powers and duties in all cases to which they are assigned by the Commission, to wit:

(1) To administer oaths and affirmations.

(2) To issue subpoenas authorized by law.

(3) To rule upon offers of proof and receive relevant evidence.

(4) To take or cause depositions to be taken whenever the ends of justice would be served thereby.

(5) To regulate the course of the hearings.

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties.

(7) To dispose of procedural requests or similar matters.

(8) To make and submit to the Commission a recommended decision as provided by § 2.22.

(9) To certify questions to the Commission for its determination.

(10) To take any other action authorized by Commission rule consistent with the Administrative Procedure Act.

(c) Trial examiners shall perform no duties inconsistent with their duties and responsibilities as such. Save to the extent required for the disposition of ex parte matters as authorized by law, no trial examiner shall consult any person or party as to any fact in issue unless upon notice and opportunity for all parties to participate.

(d) Trial examiners shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the Commission.

(e) The trial examiner is charged with the duty of conducting a fair and impartial hearing and of maintaining order in form and manner consistent with the dignity of the Commission. He will note on the record any disregard by counsel of his rulings on matters of order and procedure and where he deems it necessary shall make special written report thereof to the Commission. In the event that counsel supporting the complaint or counsel for any respondent shall be guilty of disrespectful, disorderly, or contumacious language or conduct in connection with any hearing, the trial examiner may suspend the proceeding and submit to the Commission his report thereon, together with his recommendations as to whether any rule should be issued to show cause why such counsel should not be suspended or disbarred pursuant to § 2.7 or subjected to other appropriate action in respect thereto. A copy of such trial examiner's report shall be furnished to any counsel upon whose language or conduct such report is made, and the Commission will take disciplinary action only after an opportunity for hearing has been accorded such counsel.

§ 2.15 *Hearings in adversary proceedings.* All hearings pursuant to formal complaint shall be public unless otherwise ordered by the Commission, and such hearings shall be subject to the following conditions and requirements:

(a) Every party respondent shall have the right of due notice, cross examination, presentation of evidence, objection, exception, motion, argument, appeal and all other fundamental rights.

(b) The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(c) Not less than five (5) days notice of the time and place of any indefinitely postponed hearing shall be given to counsel of record or to parties, but in appointing such hearings due regard shall be had for the convenience and necessity of all parties or their representatives.

(d) The trial examiner may withdraw from a case when he deems himself disqualified, or he may be withdrawn by the Commission after timely affidavits alleging personal bias or other disqualification have been filed and the matter has been heard by the Commission or by a trial examiner whom it has delegated to investigate and report.

(e) Hearings shall be stenographically reported by the official reporter of the Commission under supervision of the presiding trial examiner. A transcript of said report shall be a part of the record and the sole official transcript of the proceeding. Transcripts will be supplied to respondents and to the public by the official reporter at rates not to exceed the maximum rates fixed by contract between the Commission and the reporter.

(f) Changes in the official transcript may be made only when they involve errors affecting substance and then only

in the manner provided in this section. No physical changes shall be made in or upon the official record or copies thereof in the custody of the Commission. Lists of changes agreed to in writing by opposing counsel may be incorporated into the record, if and when approved by the trial examiner, at the close of evidence in support of the complaint, or at the final hearing before the trial examiner, or at any time thereafter before he files his report, and at no other times. If any changes are ordered by the trial examiner without such written agreement between opposing counsel they shall be subject to objection and exception.

§ 2.16 *Subpoenas.* (a) Subpoenas requiring the attendance of witnesses or the production of documentary evidence from any place in the United States, at any designated place of hearing, may be issued by the presiding trial examiner or a member of the Commission. Application therefor may be made either to the presiding trial examiner or to the Commission.

(b) Application for subpoenas for the production of documentary evidence shall be made in writing to the presiding trial examiner or to the Commission. The application must have reasonable scope and specify as exactly as possible the documents desired, and show their general relevancy. The application shall be verified by oath or affirmation.

(c) An appeal may be taken to the Commission by the parties from the presiding trial examiner's denial of a motion to quash or refusal to issue a subpoena for the production of documentary evidence.

§ 2.17 *Witnesses and fees.* (a) Witnesses at formal hearings shall be examined orally. Witnesses summoned in support of the complaint shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) Witnesses whose depositions are taken, and the persons taking such depositions, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(c) Witness fees and mileage, and fees for depositions, shall be paid by the party at whose instance witnesses appear.

§ 2.18 *Evidence*—(a) *In general.* Counsel supporting the complaint shall have the general burden of proof and the proponent of any factual proposition shall be required to sustain the burden of proof with reference thereto. The trial examiner, subject to appeal to the Commission as provided in § 2.20, shall admit relevant, material, and competent evidence, but shall exclude irrelevant, immaterial, and unduly repetitious evidence.

(b) *Documentary.* Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such immaterial or irrelevant parts shall be excluded, and shall be segregated insofar as practicable.

(c) *Official notice of facts.* Where any recommended decision of the trial examiner or any decision of the Commission, or part thereof, rests upon the taking of official notice of a material fact not appearing in the evidence in the record, any party shall, upon timely motion, be afforded an opportunity to show the contrary.

(d) *Objections.* Objections to evidence shall be in short form, stating the grounds relied upon, and the transcript shall not include argument or debate thereon except as ordered by the presiding officer. Rulings on such objections shall appear in the record.

§ 2.19 *Depositions.* (a) For good and exceptional cause the testimony of any witness may be taken in any case whether at issue or not, by deposition de bene esse or, prior to the pendency of a case, according to the common usage in Chancery. Depositions may be taken orally or upon interrogatories before any person having power to administer oaths and who has been duly designated by the Commission or the presiding trial examiner.

(b) Unless notice be waived, no deposition shall be taken except after at least five (5) days' written notice to the parties within the United States and fifteen (15) days' notice when deposition is to be taken elsewhere.

(c) Any party desiring to take the deposition of a witness shall make application in writing to the Commission or the presiding trial examiner setting out the reasons why such deposition should be taken, the character of the deposition, the time when, the place where, and the name and Post Office address of the person before whom such deposition is to be taken, the name and Post Office address of each witness, and the subject matter concerning which the witness is expected to testify. If good and exceptional cause be shown, an order containing such instructions will be made and served upon the parties.

(d) Upon application granted, such deposition may be taken before a person having power to administer oaths other than the person designated in the notice, provided reasonable written notice of such change is given the opposing party. Each witness so testifying shall be duly sworn and the adverse party shall have the right to cross-examine such witnesses. The questions propounded to the witnesses and the answers thereto shall be reduced to writing, and, in the presence of the officer taking the deposition, read to the witness and subscribed by the witness and certified in usual form by said officer. Thereafter the said officer shall forward said deposition with three copies thereof, in an envelope under seal, endorsed with the title of the case, and addressed to the Commission at its office in Washington, D. C. If in a pending case, such sealed deposition shall immediately be forwarded to the presiding trial examiner and at a time of hearing read in evidence subject to such objections to the questions and answers as were noted at the time of taking the deposition or as would be valid were the witness personally present at such hearing.

§ 2.20 *Appeals to the Commission from rulings of trial examiners.* Except as provided for in § 2.16, parties shall not have the right to prosecute appeals from rulings of trial examiners during the course of hearings unless it be shown to the Commission that the prompt decision of such appeal is necessary to prevent unusual delay and expense.

Motions for reconsideration and reversal of previous rulings may be made before the trial examiner at the termination of the reception of evidence. In such motions each exception shall be separately set out, with exact citations to each portion of the record involved and references to the principal authorities relied upon. The trial examiner shall rule upon each exception. An appeal may be taken to the Commission from any adverse ruling on any such motion and the record relating thereto shall be certified to the Commission. Notice of such appeal shall be made on the record when the rulings are made and thereupon the trial examiner shall fix a time, not exceeding fifteen (15) days unless the necessity for further time shall clearly appear, for filing the appeal and a like time for filing the answer. Pending Commission decision and action upon such appeal the case shall remain open. Any such matters not thus laid before the Commission shall be deemed waived.

§ 2.21 *Proposed findings and conclusions before trial examiner.* At the close of the reception of evidence before the trial examiner in all formal proceedings, or within a reasonable time thereafter to be fixed by the trial examiner, parties may file for consideration by the trial examiner their proposed findings and conclusions, together with their reasons therefor. Such proposals shall be in writing and shall contain exact references to the record and authorities relied on. Copies thereof shall be furnished all parties, and three copies, including the signed original, shall be filed with the Commission.

Oral argument may be allowed at the discretion of the trial examiner. The record shall show the ruling on each such proposal. Exceptions to such rulings shall be subject to appeal under § 2.23 only.

§ 2.22 *Trial examiner's recommended decision in adversary proceedings.* (a) The trial examiner, as soon as practicable and within thirty (30) days after receipt of the complete transcript and all exhibits in adversary proceedings, shall make and file a recommended decision which shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) an appropriate order.

(b) Except where he shall have become unavailable to the Commission, the said recommended decision shall be made by the trial examiner who presided at the hearing.

(c) No officer, employee or agent, engaged in the performance of investigative or prosecuting functions for the Commission, and no party respondent or his agent or counsel in any case shall, in that or a factually related case, participate or advise in the recommended decision of the trial examiner, except as a

witness or as counsel in public proceedings.

(d) All findings, conclusions and orders recommended by the trial examiner shall be based upon the whole record and supported by reliable, probative and substantial evidence (including facts of which he may take official notice) No findings shall be recommended except such as he deems supported by the greater weight of the evidence.

(e) At any time prior to the filing of his recommended decision the trial examiner may, for good cause shown, reopen the case for the reception of further evidence.

(f) A copy of the trial examiner's recommended decision shall be served upon each party, counsel or other representative, who has appeared pursuant to § 2.7.

§ 2.23 *Exceptions.* (a) Any party may, within ten (10) days after receipt of a copy of the trial examiner's recommended decision, file with the Commission exceptions to any part thereof and to the trial examiner's failure to include proposed findings and conclusions requested under § 2.21. Each exception shall specify the portions of the record and the authorities relied on to sustain each point.

(b) Ten (10) copies of the exceptions shall be filed. All exceptions and rulings thereon shall become part of the record.

(c) A copy of such exceptions shall forthwith be furnished the trial examiner and a copy served upon each of the parties and counsel who were served with a copy of the trial examiner's recommended decision.

(d) If exceptions are to be argued, they shall be argued at the time of final argument upon the merits, except as otherwise provided in § 2.20.

§ 2.24 *Briefs and oral arguments before the Commission*—(a) *Questions for presentation.* Questions which may be presented for consideration and decision by the Commission on final hearing include the following;

(1) Whether the findings and conclusions recommended by the trial examiner are relevant and material to the issues and are supported by reliable, probative, and substantial evidence and by the greater weight of the evidence;

(2) Whether additional findings and conclusions, not recommended by the trial examiner, should be made either with or without sending the case back to the trial examiner for the reception of further evidence;

(3) Whether the trial examiner was justified in having taken official notice of any fact and whether the Commission should take official notice of any other fact;

(4) Whether due process was observed and whether there was any prejudicial irregularity in procedure;

(5) Whether the facts show a violation of law amenable to redress by the Commission and what conclusions of law are justified and requisite in the premises; and

(6) Whether an order to cease and desist, an order of dismissal, or other order, should be entered and issued, and the substance and form thereof.

(b) *Briefs*—(1) *Filing.* (i) Any party to a proceeding may file a brief in support of his contentions within the time limits fixed by the regulations in this part.

(ii) Briefs not filed on or before the time fixed in the rules will be received only by special permission of the Commission.

(2) *Time.* (i) Opening brief shall be filed by the attorney supporting the complaint within twenty (20) days after service upon him of a copy of the recommended decision of the trial examiner.

(ii) Brief on behalf of respondent shall be filed within twenty (20) days after service upon respondent or respondent's attorney of copy of brief in support of the complaint.

(iii) Where respondent shall have filed an answer admitting all material allegations of fact, the time so limited shall begin to run at the time of filing such answer.

(iv) In the event permission is granted for filing reply brief in support of the complaint, it shall be filed within ten (10) days after filing of brief on behalf of respondent. No further brief on behalf of respondent shall be filed.

(3) *Number* Twenty (20) copies of each brief shall be filed.

(4) *Contents.* (i) Briefs, except the reply brief in support of the complaint, shall contain, in the following order:

(*a*) A concise abstract or statement of the case.

(*b*) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with references to the pages of the record and the authorities relied upon in support of each point.

(*ii*) The exceptions, if any, to the recommended decision of the trial examiner may also be included in the brief.

(5) *Index.* Briefs comprising more than ten (10) pages shall contain on their top fly leaves a subject index with page references. The subject index shall be supplemented by an alphabetical list of all cases referred to, with references to pages where references are cited.

(6) *Form.* Briefs shall be printed, multigraphed or otherwise neatly processed on good unglazed white paper in type not smaller than ten (10) point doubleleaded, citations and quotations single leaded; footnotes not less than eight (8) point single leaded. Type page shall be not more than twenty-nine (29) picas wide by approximately forty-eight (48) picas deep and trimmed page shall be seven (7) inches by ten (10) inches, with an inside margin of not less than one (1) inch.

(7) *Length.* Unless leave be granted, briefs shall not exceed seventy-five (75) printed pages.

(8) *Signing.* At least one copy of each brief shall be signed in ink, by the respondent or his duly authorized attorney, as prescribed in § 2.12.

(c) *Oral arguments.* (1) Oral arguments before the Commission shall be had as ordered, on written application of the Chief Trial Counsel of the Commission, of of the respondent, or of attorney for respondent, filed within fifteen (15) days after filing of brief on behalf of respondent.

(2) Oral arguments before the Commission shall be reported stenographically unless otherwise ordered by the Commission.

§ 2.25 *Commission's adjudication.* (a) Upon submittal of a case to the Commission for final decision on the merits the Commission will consider the whole record, including the recommended decision of the Trial Examiner and the exceptions thereto, will resolve all questions of fact by what it deems to be the greater weight of the evidence thereon, will make its decision stating the reasons or basis therefor and enter an appropriate order, and wherever it decides that an order to cease and desist should be entered will also make, as provided by law, a report in writing stating its findings as to the facts. As authorized under the various statutes defining its power and duties the Commission adjudicates all formal proceedings brought before it and as authorized under the Administrative Procedure Act reserves such adjudications exclusively to itself.

(b) No officer, employee or agent, engaged in the performance of investigative or prosecuting functions for the Commission, and no party respondent or his agent or counsel in any case shall, in that or a factually related case, participate or advise in the decision of the Commission, except as a witness or as counsel in public proceedings.

§ 2.26 *Reports showing compliance with orders and with stipulations.* (a) In every case where an order to cease and desist is issued by the Commission for the purpose of preventing violations of law and in every instance where the Commission approves and accepts a stipulation in which a party agrees to cease and desist from the unlawful methods, acts or practices involved, the respondents named in such orders and the parties so stipulating shall file with the Commission, within sixty days of the service of such order and within sixty days of the approval of such stipulation, a report, in writing, setting forth in detail the manner and form in which they have complied with said order or with said stipulation; *Provided, however,* That if within the said sixty (60) day period respondent shall file petition for review in a circuit court of appeals, the time for filing report of compliance will begin to run de novo from the final judicial determination; *And provided further,* That where the order prevents the use of a false advertisement of a food, drug, device or cosmetic, which may be injurious to health because of results from such use under the conditions prescribed in the advertisement, or under such conditions as are customary or usual, or if the use of such advertisement is with intent to defraud or mislead, an interim report stating whether and how respondents intend to comply shall be filed within ten days.

(b) Within its sound discretion, the Commission may require any respondent upon whom such order has been served and any party entering into such stipulation, to file with the Commission, from time to time thereafter, further reports

in writing, setting forth in detail the manner and form in which they are complying with said order or with said stipulation.

(c) Reports of compliance shall be signed in ink by respondents or by the parties stipulating.

§ 2.27 *Reopening of proceedings.* (a) In any case where an order to cease and desist has been issued by the Commission it may, upon notice to the parties, modify or set aside, in whole or in part, its report of findings as to the facts or order in such manner as it may deem proper at any time prior to expiration of the time allowed for filing a petition for review or prior to the filing of the transcript of record in the proceeding in a Circuit Court of Appeals of the United States pursuant to a petition for review or for enforcement of such order.

(b) In any case where an order to cease and desist issued by the Commission has become final by reason of court affirmance or expiration of the statutory period for court review without a petition for such review having been filed, the Commission may at any time after reasonable notice and opportunity for hearing as to whether changed conditions of fact or of law or the public interest so require, reopen and alter, modify or set aside in whole or in part its report of findings as to the facts or order therein whenever in the opinion of the Commission, after such hearing, such action is required by said changed conditions or by the public interest.

(c) In any case where an order dismissing a formal complaint of the Commission has been entered the Commission may, upon reasonable notice to the parties and opportunity for a hearing as to whether said proceeding should be reopened, issue an order reopening the same whenever, in the opinion of the Commission, changed conditions of fact or of law or the public interest so require.

§ 2.28 *Trade practice conference procedure*—(a) *Purpose.* The trade practice conference procedure has for its purpose the establishment, by the Commission, of trade practice rules in the interest of industry and the purchasing public. This procedure affords opportunity for voluntary participation by industry groups or other interested parties in the formulation of rules to provide for elimination or prevention of unfair methods of competition, unfair or deceptive acts or practices and other illegal trade practices. They may also include provisions to foster and promote fair competitive conditions and to establish standards of ethical business practices in harmony with public policy. No provision or rule, however, may be approved by the Commission which sanctions a practice contrary to law or which may aid or abet a practice contrary to law.

(b) *When authorized.* Trade practice conference proceedings may be authorized by the Commission upon its own motion or upon application therefor whenever such proceedings appear to the Commission to be in the interest of the public. In authorizing proceedings, the Commission may consider whether such proceedings appear to have possibilities (1) of constructively advancing the best interests of industry on sound competitive principles in consonance with public policy, or (2) of bringing about more adequate or equitable observance of laws under which the Commission has jurisdiction, or (3) of otherwise protecting or advancing the public interest.

(c) *Application.* Application for a trade practice conference may be filed with the Commission by any interested person, party or group. Such application shall be in writing and be signed by the applicant or the duly authorized representative of the applicant or group desiring such conference. The following information, to the extent known to the applicant, shall be furnished with such application or in a supplement thereto:

(1) A brief description of the industry, trade, or subject to be treated.

(2) The kind and character of the products involved.

(3) The size or extent and the divisions of the industry or trade groups concerned.

(4) The estimated total annual volume of production or sales of the commodities involved.

(5) List of membership of the industry or trade groups concerned in the matter.

(6) A brief statement of the acts, practices, methods of competition or other trade practices desired to be considered, or drafts of suggested trade practice rules.

(d) *Informal discussions with members of the Commission's staff.* Any interested person or group may, upon request, be granted opportunity to confer in respect to any proposed trade practice conference with the Commission's trade practice conference division, either prior or subsequent to the filing of any such application. They may also submit any pertinent data or information which they desire to have considered. Such submission shall be made during such period of time as the Commission or its duly authorized official may designate.

(e) *Industry conferences.* Public notice of the time and place of any such authorized conference shall be issued by the Commission. A member of the Commission or of its staff shall have charge of the conference and shall conduct the conference pursuant to direction of the Commission and in such manner as will facilitate the proceeding and afford appropriate consideration of matters properly coming before the conference. A transcript of the conference proceedings shall be made, which, together with all rules, resolutions, modifications, amendments or other matters offered, shall be filed in the office of the Commission and submitted for its consideration.

(f) *Public hearing on proposed rules.* Before final approval by the Commission of rules for an industry, and upon public notice further opportunity shall be afforded by the Commission to all interested persons, corporations, or other organizations, including consumers, to submit in writing relevant suggestions or objections and to appear and be heard at a designated time and place.

(g) *Promulgation of rules.* When trade practice rules shall have been finally approved and received by the Commission, they shall be promulgated by official order of the Commission and published, pursuant to law, in the FEDERAL REGISTER. Said rules shall become operative thirty (30) days from date of promulgation or at such other time as may be specified by the Commission. Copies of the final rules shall be made available at the office of the Commission. Under the procedure of Commission a copy of the trade practice rules as promulgated by the Commission is sent to each member of the industry whose name and address is available, together with an acceptance form providing opportunity to such member to signify his intention to observe the rules in the conduct of his business.

(h) *Violations.* Complaints as to the use, by any person, corporation or other organization, of any act, practice or method inhibited by the rules may be made to the Commission by any person having information thereof. Such complaints, if warranted by the facts and the law, will receive the attention of the Commission in accordance with the law. In addition, the Commission may act upon its own motion in proceeding against the use of any act, practice or method contrary to law.

(i) *Amendment of rules.* Trade practice rules may be amended or rescinded by the Commission upon its own motion or upon application filed with it by any interested person, party or group. Such application shall be in writing, signed by the applicant or his duly authorized representative, and shall set forth the reasons for the requested action.

§ 2.29 *Public information.* (a) The rules of practice of the Commission, and such amendments as may be made thereto, shall be published in the FEDERAL REGISTER and may be obtained from the Commission upon application.

(b) The findings, conclusions of law, and final orders of the Commission in respective formal proceedings and a digest of accepted stipulations to desist from unlawful practices shall be published in the official reports of the Commission.

(c) Trade practice conference rules for respective industries, issued under § 2.27, may be obtained upon application to the Commission and shall be published in the FEDERAL REGISTER.

(d) Information concerning the activities of the Commission will be released from time to time under the direction or pursuant to the authority of the Commission.

(e) In proceedings instituted by the issuance of formal complaint, the pleadings, transcript of testimony, exhibits, and all documents received in evidence or made a part of the record therein shall be available for inspection and copying by the public at the convenience of the Commission.

(f) Documents, records, and reports made public by the Commission, including stipulations to cease and desist, certain trade practice conference records, and certain papers filed under the Wool Products Labeling Act, shall be available for inspection and copying at the convenience of the Commission.

(g) The records and files of the Commission, and all documents, memoranda, correspondence, exhibits, and information of whatever nature, other than the documentary matters above described, coming into the possession or within the knowledge of the Commission or any of its officers or employees in the discharge of their official duties, are confidential, and none of such material or information may be disclosed, divulged, or produced for inspection or copying except under the following circumstances:

(h) Upon good cause shown, the Commission may by order direct that certain records, files, papers, or information be disclosed to a particular applicant.

(1) Application by a member of the public for such disclosure shall be in writing, under oath, setting forth (i) the interest of the applicant in the subject matter (ii) a description of the specific information, files, documents, or other material inspection of which is requested; (iii) whether copies are desired; and (iv) the purpose for which the information or material, or copies, will be used if the application is granted. Upon receipt of such an application the Commission will take action thereon, having due regard to statutory restrictions, its rules of practice and the public interest.

(2) In the event that confidential material is desired for inspection, copying, or use by some agency of the Federal or a State Government, a request therefor may be made by the administrative head of such agency. Such request shall be in writing, and shall describe the information or material desired, its relevancy to the work and function of such agency and, if the production of documents or records or the taking of copies thereof is asked, the use which is intended to be made of them. The Commission will consider and act upon such requests, having due regard to statutory restrictions, its rules of practice, and the public interest.

(i) In cases in which an officer or employee of the Commission has been lawfully served with a subpoena duces tecum, material designated herein as confidential shall be produced only when and as authorized by the Commission. Service of such subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it shall deem advisable in the premises. If the officer or employee so served has not received instructions from the Commission prior to the return date of the subpoena, he shall appear in response thereto and respectfully decline to produce the documents or records subpoenaed (pointing out that he is not permitted to do so under this section) and request a continuance pending action by or instructions from the Commission. If, notwithstanding, the court or other body orders the production of any of the material subpoenaed, the officer or employee shall immediately report the facts to the Commission.

Promulgated as of this date in pursuance of the action of the Federal Trade Commission under date of July 16, 1947, and August 6, 1947, effective on date of publication thereof in the FEDERAL REGISTER.

By direction of the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 47-7524; Filed, Aug. 11, 1947; 8:46 a. m.]

PART 7—ORGANIZATION, PROCEDURES, AND FUNCTIONS

The Commission, on July 16, 1947, amended § 7.11 *Administration of Export Trade Act,* and § 7.14 *Administration of the Wool Products Labeling Act,* of its statement of organization, procedures, and functions (§§ 7.1 to 7.15, inclusive) and on August 6, 1947 amended § 7.10 *Procedure upon formal complaints and before the courts,* added § 7.16 *Trade mark procedure,* and § 7.17 *Compliance and enforcement,* and rearranged the order of the last seven sections; so that said statement Part 7, Organization, procedures, and functions (11 F R. 177A–571) shall read as follows, effective on date of publication thereof in the FEDERAL REGISTER.

Sec.
7.1 The Commission.
7.2 Offices.
7.3 Hours.
7.4 Sessions.
7.5 Quorum.
7.6 Public information.
7.7 The Secretary.
7.8 Preliminary legal investigations.
7.9 Agreements to cease and desist on stipulated facts.
7.10 Procedure upon formal complaints and before the courts.
7.11 Hearings on formal complaints.
7.12 Compliance and enforcement.
7.13 Trade mark procedure.
7.14 Administration of Export Trade Act.
7.15 Administration of the Wool Products Labeling Act.
7.16 Trade practice conference proceedings.
7.17 General economic surveys and reports.

AUTHORITY: §§ 7.1 to 7.17, inclusive, issued under sec. 6, 38 Stat. 721, 60 Stat. 237; 15 U. S. C. 46, 5 U. S. C. Sup. 1001 et seq.

§ 7.1 *The Commission.* The Federal Trade Commission is composed of five Commissioners appointed by the President and confirmed by the Senate. It was established in 1914 as an agency to foster fair and free competition and to supplement the antitrust laws. It has remedial functions in the administration and enforcement of various statutes prohibiting the use of unfair, deceptive, discriminatory, and monopolistic trade practices. These functions are exercised by way of adversary proceedings and orders to cease and desist, by the stipulated acquiescence of the parties or by trade practice conference proceedings. The Commission also exercises supervision over associations engaged in export trade. The Commission also has advisory functions which are exercised by way of general investigations and reports to Congress or to the President and by recommendations for legislation. These functions are exercised through various divisions of the Commission as described in this part.

§ 7.2 *Offices.* (a) The principal office of the Commission is at Washington, D. C.

(b) All communications to the Commission should be addressed to Federal Trade Commission, Pennsylvania Avenue at Sixth Street, Washington 25, D. C., unless otherwise specified.

(c) Branch offices of the Office of Legal Investigations are maintained at Room 501, 45 Broadway, New York 6, N. Y., 1118 New Post Office Building, 433 West Van Buren Street, Chicago 7, Ill., Federal Office Building, Room 133, Civic Center, San Francisco 2, Calif., 447 Federal Office Building, Seattle 4, Wash., Room 652, Federal Office Building, 600 South Street, New Orleans 12, La.

§ 7.3 *Hours.* Offices are open on each business day from 8:30 a. m. to 5 p. m.

§ 7.4 *Sessions.* (a) The Commission may meet and exercise all its powers at any place, and may, by one or more of its members, or by such representatives as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

(b) Sessions of the Commission for hearings will be held as ordered by the Commission.

(c) Sessions of the Commission for the purpose of making orders and for transaction of other business unless otherwise ordered are held at the principal office of the Commission at Pennsylvania Avenue at Sixth Street, Washington, D. C., on each business day.

§ 7.5 *Quorum.* A majority of the members of the Commission constitutes a quorum for the transaction of business.

§ 7.6 *Public information.* All requests, whether for information or otherwise, and submittals should be addressed to the principal office of the Commission.

§ 7.7 *The Secretary.* The Secretary is the executive officer of the Commission and is the legal custodian of its seal, papers, records, and property; and all orders of the Commission are signed by the Secretary or such other person as may be authorized by the Commission.

§ 7.8 *Preliminary legal investigations.* All preliminary legal investigations of the Commission are conducted by the staff of its Office of Legal Investigations which is made up of a Director, an Assistant Director, a Chief Examiner, and a Chief of the Radio and Periodical Division. The Chief Examiner has four Assistants, and there is one Assistant Chief in the Radio and Periodical Division.

(a) *Applications for complaint.* (1) Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

(2) Such application for complaint should be in writing, signed by or in behalf of the applicant, and should contain a short and simple statement of the facts constituting the alleged violation of law, and the name and address of the applicant and of the party complained of, together with all relevant available information. No forms or formal pro-

cedure are required in making an application for complaint.

(b) *Status of applicant for complaint.* The applicant is not a party to a Commission proceeding except where allowed to intervene as provided by the statute. It has always been and now is the rule not to publish or divulge the name of an applicant.

(c) *Docketing of applications for complaint.* Upon receipt of an application for complaint, the Commission through its Office of Legal Investigations, considers the essential jurisdictional elements before deciding whether or not it shall be docketed. Also, the Commission, acting on its own motion, dockets applications for complaint and initiates investigations. It is the policy not to docket an application for complaint or institute proceedings where the alleged violation of law is merely a private controversy and does not tend adversely to affect the public.

(d) *Investigation of docketed matters.* The general procedure is that after a matter has been docketed, it is assigned to an attorney or examiner for the purpose of developing all the material facts. He is directed to interview the applicant. He is also directed to interview the party complained against, advise him fully of the charges, and obtain relevant information, oral and documentary, including such as may be furnished in defense. Such additional investigation is made as may be necessary. Preliminary investigations under the Export Trade Act are made in the same manner.

(e) *Report on investigation of docketed matters.* After developing all the relevant facts, the attorney examiner summarizes the material in a report, reviews the law applicable, and makes recommendations as to what action he believes the Commission should take. The file is reviewed by the Chief Examiner, and, if found to be complete, is submitted by him to the Commission (through the Director of the Office of Legal Investigations) with a summary of the issues involved, his conclusions thereon, and his recommendation. He may recommend (1) closing of the file without prejudice to the right of the Commission to reinstate the matter if and when conditions may warrant, or (2) disposition of the application for complaint by the respondent signing a stipulation as to the facts, and an agreement to cease and desist from the practices set forth in the stipulation, or (3) issuance of formal complaint, or (4) other appropriate action.

(f) *Radio and periodical advertising.* The Radio and Periodical Division of the Office of Legal Investigations conducts a current and continuing survey of radio, newspaper, magazine, and mail order catalog or circular advertising. If it appears that a published advertisement may be misleading, a contact letter is sent to the advertiser containing a request for pertinent information and material regarding the product and the advertisement thereof. He is also invited to submit any statement he may care to make regarding the product and his advertising of it. When all available data have been examined and analyzed, the Chief of the Division makes his recommendation to the Commission (through the Director of the Office of Legal Investigations) in the same manner as described with relation to docketed matters.

§ 7.9 *Agreements to cease and desist on stipulated facts.* (a) The Commission maintains a Division of Stipulations consisting of a Director, Assistant Director, and staff of attorney conferees.

(b) Whenever the Commission has reason to believe that any person has been or is using unfair methods of competition or unfair or deceptive acts or practices in commerce, and that the interest of the public will be served by so doing, it may withhold the issuance of a formal complaint and extend an opportunity to execute a stipulation satisfactory to the Commission, in which the proposed respondent, after admitting the material facts, agrees to cease and desist from, and not to resume such unfair methods of competition or unfair or deceptive acts or practices. It is not the policy of the Commission thus to dispose of matters involving intent to defraud or mislead; false advertisement of food, drugs, devices, or cosmetics which are inherently dangerous or where injury is probable; suppression or restraint of competition through conspiracy or monopolistic practices; violations of the Clayton Act; violations of the Wool Products Labeling Act of 1939 or the rules promulgated thereunder; or where the Commission is of the opinion that such procedure will not be effective in preventing continued use of the unlawful method, act, or practice. The Commission reserves the right in all cases, for any reasons which it regards as sufficient, to withhold this privilege. Stipulations after acceptance by the Commission are matters of public record. When a case is referred to the Division of Stipulations, that Division gives the proposed respondent notice of such reference, together with a statement of the alleged illegal acts, practices, or methods, and requests a reply within a specified period of time.

(c) The proposed respondent may reply by correspondence or upon his request, may confer with the Director of the Division of Stipulations, or with a designated attorney conferee either in person or through his authorized representative.

(d) If the proposed respondent enters into a satisfactory stipulation to cease and desist from such practices as the Director of the Division of Stipulations deems in accord with the Commission's direction, and to have been sufficiently substantiated by the investigational records and reports, or by the admissions of the proposed respondent, said stipulation is submitted to the Commission for its approval. In the event of failure of the proposed respondent to sign a satisfactory stipulation covering the charges which the Director considers to have been so substantiated, the Director then reports the matter to the Commission with recommendation as to what action is required in the public interest. He may recommend formal complaint or closing of the matter in whole or in part without prejudice to the right of the Commission to reopen the same at a later date, or other appropriate action.

§ 7.10 *Procedure upon formal complaints and before the courts.* (a) When the issuance of a formal complaint is directed by the Commission, the matter is referred to the Office of Chief Trial Counsel for preparation of the complaint, and proceedings thereunder. The complaint names the respondent or respondents, alleges a violation or violations of law, and contains a statement of the charges. The proceedings are carried forward thereafter in conformity with the rules of practice.

(b) Should an order to cease and desist be issued by the Commission under the Federal Trade Commission Act or the Wool Products Labeling Act, the order becomes final sixty days after date of service upon the respondent, unless within that period the respondent petitions an appropriate United States Circuit Court of Appeals to review the order. In case of review, the Circuit Court enters a decree affirming, modifying, or setting aside the order of the Commission and enforcing the same to the extent that such order is affirmed. Final orders in such cases are enforceable by civil penalty suits, instituted by the Attorney General. Under the Clayton Act, however, an order to cease and desist does not become final by lapse of time. The order must be affirmed by the United States Circuit Court of Appeals on application for review by the respondent or upon petition of the Commission. After affirmation, appropriate proceedings may be brought for violation of the Court's decree.

(c) The function of preparing, trying, briefing and arguing complaints in litigated cases is a prosecuting function which is performed by a staff of attorneys who work under the supervision of the Chief Trial Counsel and three Assistant Chief Trial Counsel. Neither they nor any of the attorneys performing such function in a particular case or in a factually related one participate or advise in the decision of such case except under the same conditions that are applicable to attorneys representing the respondent therein and which conditions are set forth in the Commission's published rules of practice.

(d) The function of handling the Commission's cases which are reviewed by the courts after decision by the Commission is performed by the General Counsel, an Associate General Counsel and an Assistant General Counsel, with the necessary assisting attorneys. The Office of the General Counsel under supervision of an Assistant General Counsel administers trade mark, compliance and enforcement matters as hereinafter set out. The General Counsel also acts as the principal legal adviser to the Commission on the applicable law, precedent or policy in a wide variety of matters.

§ 7.11 *Hearings on formal complaints.* (a) When, after the issuance of formal complaint, issues are joined, the matter comes under the Commission's trial procedure, which is implemented through the Trial Examiner's Division, consisting of the Chief Trial Examiner, an Assistant Chief Trial Examiner, and a staff of trial examiners. The Chief Trial Examiner acts as the administrative head and chief law officer of the Division. He

exercises supervision over the forms of reports and coordinates methods of compliance by the trial examiners with the rules of practice.

(b) In so far as practicable, trial examiners are assigned in rotation to cases by the Commission on recommendation of the Chief Trial Examiner. The trial examiner thus designated proceeds to convene hearings for the reception of relevant evidence on the issues. A Commissioner may be assigned to this duty.

(c) Hearings are held in such parts of the country as may be necessary with due regard for the convenience of the parties and witnesses. All proper parties may be represented by counsel and all fundamental rights such as cross-examination of witnesses, adduction of evidence, objections, exceptions, motions, appeals, and the submission of briefs and oral argument are preserved to the respondents.

(d) After the evidence is concluded in a case and parties have been duly heard and their contentions considered, the Trial Examiner makes and files a recommended decision which includes a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, and (2) an appropriate order. The Trial Examiner's recommended decision becomes a part of the record and a copy thereof is served on each party who may then file exceptions thereto and present substitute conclusions and form of order.

(e) The Commission, after considering the entire record, including the recommended decision of the trial examiner and the exceptions thereto, resolves all questions of fact by what it deems to be the greater weight of the evidence thereon, and makes its decision stating the reasons or basis therefor and enters an appropriate order. Wherever it decides that an order to cease and desist should be entered, the Commission also makes a report in writing stating its findings as to the facts.

§ 7.12 *Compliance and enforcement.* (a) Reports of compliance with orders to cease and desist are required in accordance with the provisions of § 2.26 of the rules of practice. The Commission may by order require such supplemental reports of compliance as it considers warranted. Reports of compliance must consist of a full statement showing the manner and form in which the order has been complied with. Mere statements that the respondent is not violating the order are not acceptable. A factual showing is required sufficient to enable the Commission to appraise the manner and form of compliance.

(b) After an order to cease and desist issued by the Commission pursuant to the Federal Trade Commission Act has become final as provided for under section 5 of that act, and the Commission has reason to believe that a respondent has violated such order, it shall certify the facts concerning the violation to the Attorney General, who may institute a suit in one of the District Courts of the United States for the recovery of civil penalties as provided in the act. In proceedings under the Federal Trade Commission Act, where a Circuit Court of Appeals of the United States has by decree commanded obedience to the Commission's order, enforcement may be accomplished by way of contempt proceedings in the Circuit court. With respect to orders under the various provisions of the Clayton Act, enforcement must be accomplished by way of contempt proceedings.

(c) Matters relating to reports of compliance with, and violation of, or enforcement of Commission orders are handled in the Office of Compliance, which is a part of the Office of the General Counsel, under the supervision of an Assistant General Counsel, except that the Appellate Division of the Office of the General Counsel handles appearances in the Circuit Courts in enforcement proceedings by way of contempt.

(d) Matters relating to reports of compliance with voluntary agreements to cease and desist (stipulations) are handled in the Division of Stipulations.

§ 7.13 *Trade mark procedure.* (a) The Trade Mark Act of 1946 authorizes the Commission to institute proceedings before the Commissioner of Patents in certain circumstances for cancellation of the registration of marks which do not conform to the requirements enumerated in the act. The functions delegated to the Commission by this act are administered in and prosecuted by the Office of the General Counsel through the Trade Mark Division.

(b) Applications to the Commission for the institution of proceedings for the cancellation of registration of trade, service, or certification marks should be in writing, signed by or in behalf of the applicant, and should contain a short and simple statement of the facts constituting the alleged basis for cancellation, the name and address of the applicant and the party complained of, together with all relevant and available information. No forms or formal procedure are required in making such an application. Such investigation as is required to secure the facts necessary for determining whether cancellation proceedings should be instituted will be made in appropriate cases.

(c) Application from members of the public and Governmental agencies seeking the intervention of the Commission under this act, and the results of any investigation made, are referred to the Office of the General Counsel, Trade Mark Division, for consideration and report to the Commission, with recommendation. If, after consideration of the matter, the Commission concludes that it should apply for cancellation of the mark as provided in the act, it directs the Office of the General Counsel, Trade Mark Division, to institute proceedings for cancellation of the registration.

(d) Proceedings instituted by the Commission for cancellation of registration before the Commissioner of Patents are subject to the rules and regulations of that agency.

§ 7.14 *Administration of Export Trade Act.* (a) The Export Trade Act is administered in the Export Trade Office, under the general direction of the Chief Trial Counsel. The Export Trade Act authorizes the organization and operation of export trade associations and extends to them certain limited exemptions from the antitrust laws. Such associations must be entered into for the sole purpose of engaging in export trade and must be actually so engaged and are prohibited from restraining the trade of a domestic competitor, from artificially or intentionally enhancing or depressing prices in this country, or substantially lessening competition or otherwise restraining trade within the United States.

(b) Under section 5 of the act, any association organized under the act is required to file with the Commission within thirty days, copies of organizational papers and thereafter to make annual reports, listing its members or stockholders, and such special reports as the Commission may require concerning the organization, business, conduct, practices, management, and relation to other associations, corporations, and individuals. No particular forms for reporting are required, but for the convenience of parties interested, forms of a first report and of the annual report currently used, are available on request. All reports must be verified. Such information is examined and analyzed by the Director of the Export Trade Office, who reports thereon to the Commission.

(c) If the Commission has reason to believe that an association has violated the antitrust laws, it conducts an investigation and if it concludes that the law has been violated, it makes to such association recommendations for the readjustment of its business in order that it may thereafter conduct its business in accordance with law. Any such investigation is conducted by the Director of the Export Trade Office, who reports to the Commission thereon, with recommendations as to any necessary readjustment of the association's business.

(d) The procedure followed in such investigations is in accordance with that for investigational hearings in § 2.3 of the rules of practice.

(e) The Assistant Chief Trial Counsel for Export Trade matters examines and analyzes the evidence and reports thereon with his recommendation.

§ 7.15 *Administration of the Wool Products Labeling Act.* (a) The general administration of the Wool Products Labeling Act and of the rules and regulations issued thereunder is carried out at the direction of the Commission by the Director of Trade and Practice Conferences and Wool Act Administration. Rules and regulations including forms have been issued pursuant to the provisions of the act and were duly published in the FEDERAL REGISTER on July 15, 1941 (16 CFR, 300.1 to 300.36) Any affected person may obtain a copy thereof upon request to the Commission. Amendments of such rules and regulations may be made by the Commission as it deems necessary and proper for the administration and enforcement of the act, either upon its own motion or upon application filed with it by any interested person, in accordance with the rules of

practice. Before any amendment is made, opportunity shall be afforded all interested persons to submit data, views and arguments, pursuant to appropriate notice published in the FEDERAL REGISTER.

(b) Among the various duties involved in such administration of the act are the formulation and issuance of rules and regulations or amendments thereto and the holding of such hearings as may be required from time to time; receiving, examining, and recording continuing guarantees for public record under section 9 of the act; acting upon applications for manufacturers' registered identification numbers and issuing or canceling such numbers; supervising and directing field inspection work and the handling of administrative compliance and matters of interpretation.

(c) Manufacturers' registered identification numbers are issued by the Commission under the provisions of (§ 300.4 of this chapter) to manufacturers residing in the United States and producing wool products subject to the act. Any such manufacturer desiring to obtain a registered identification number may file with the Commission an application therefor, such application to be in accordance with the specified form and appropriately executed and notarized. Numbers are issued when, upon examination of the application and related facts, the applicant is found to come within the terms of the rules and regulations and entitled to use such a registered identification number, the same being subject to revocation for cause or upon the applicant's discontinuance of the manufacture of wool products subject to the act.

(d) Continuing guarantees against misbranding as defined in the act may be filed with the Commission under section 9 thereof and when found to be in due form and substance as prescribed in the rules and regulations are recorded and held open to public inspection. They are renewable annually and at such other times as any change is made in the ownership or management of the guarantor. Necessary blanks may be obtained upon request.

(e) Through field inspection work wool products subject to the act as marketed by manufacturers, distributors, and dealers, are examined to ascertain whether they are properly labeled under the requirements and to effect administrative compliance in instances of alleged violation. Inspection likewise covers manufacturers' records. Administrative action to effect correction of infractions through voluntary cooperation is also taken under supervision of the Director in specific cases in which such means of correction are found adequate to effect immediate compliance and protect the public interest. If not so found, the matter may be referred to the Commission for further action. Thereafter, the statutory processes specified in the Federal Trade Commission Act may be ordered by the Commission or it may pursue such other remedial processes as are authorized in the Wool Products Labeling Act. Insofar as applicable, the practice and procedure in cases arising under the Wool Act will be as provided in cases arising under the Federal Trade Commission Act.

§ 7.16 *Trade practice conference proceedings.* (a) Rules for the elimination and prevention of unfair trade practices on an industry-wide basis are established by the Commission under the trade practice conference procedure, the requirements for which are contained in the Commission's published rules of practice. This procedure permits of the organization and utilization of cooperative effort among members of an industry for elevating the standards of business ethics and preventing unfair methods of competition, monopolistic restraint, and other trade abuses that are contrary to the laws administered by the Commission.

(b) The work is carried out by the Commission through the staff of the Office of Trade Practice Conferences and Wool Act Administration, which is under the supervision of a Director who is principal adviser to the Commission in such matters, an Associate Director, and three Assistant Directors.

(c) Proceedings for establishment of such rules for an industry may be instituted on the Commission's own motion or upon application from members of the industry. In pursuance thereof, a survey and study of the competitive problems of the industry is made and the results reported to the Commission with recommendation as to whether an industry conference should be called or other appropriate action taken. Upon direction of the Commission that a conference be held, a public announcement is made as to the time and place and all members of the industry are invited to attend and participate. The conference considers proposed rules submitted by members of the industry and those deemed necessary or desirable. These are studied and analyzed and report thereon is made to the Commission by the Director, together with his recommendations. Thereafter, proposed rules in the form deemed appropriate are released to the members of the industry and the public. Notice of hearing is issued to all interested or affected parties under which they are afforded opportunity to obtain copies of the proposed rules and to submit their suggestions, objections, and views, and also to be heard at a time and place designated in such public notice. All such hearings and trade practice conferences are open to the public and are conducted by a Commissioner or the Director or other designated official of the Office.

(d) After final hearing the entire proceedings, including the hearing record and other information submitted and bearing on the subject, are considered and reported by the Director to the Commission with his recommendations. Thereupon the entire matter receives the consideration of the Commission and all rules approved and accepted by it are promulgated and published in the FEDERAL REGISTER as rules for the industry. Copies of the rules are supplied to members of the industry, together with a form of acceptance by which each member of the industry may record his intention of observing the rules of the conduct of his business. Approved and accepted rules become operative thirty days after promulgation unless otherwise specified.

(e) Administration of the rules and compliance work in respect thereto are likewise handled through this office. Information is gathered from time to time as to operation of the rules and cooperative liaison with the industry is maintained to prevent, in accordance with the purposes of the rules, the inception or growth of unfair trade practices.

§ 7.17 *General economic surveys and reports.* (a) Under section 6 of its organic act, the Federal Trade Commission has broad powers to ascertain the facts with respect to the organization, business, conduct, practices, and management of any corporation subject to its jurisdiction, and the relations of any such corporation to other corporations and to individuals, associations, and partnerships. The Commission has power under this section to require such corporations to file with it annual or special and both annual and special reports or answers in writing to specific questions, furnishing to the Commission such information as it may require respecting the business, conduct, practices, management, etc., of any such corporation and its relation to other business enterprises. These functions of the Commission are performed by its Division of Accounts, Statistics, and Economic Reports.

(b) The administration of this Division is conducted by a Director who is also the Chief Economist, and by a Chief Accountant and Chief Statistician who are Assistant Directors of the Division. The Commission on its own initiative or upon the application of the Attorney General, may direct this Division, whenever a final decree has been entered against any defendant corporation under the Antitrust Acts, to ascertain and report the economic effects of such decree and the manner in which it is being carried out.

(c) The purposes of these general economic surveys are to ascertain and report the facts to the President or to the Congress concerning general economic conditions, the state of competition and the degree of concentration in a given industry, together with suggestions for remedial legislation. Such general economic surveys are made in response to the request of the President, at the direction of the Congress, or upon the initiative of the Commission.

(d) In the past, the economic and business facts developed by the Commission have contributed to the adoption of much remedial legislation, including the Stock Yards Act, the Securities Act, the Exchange Act, the Holding Company Act, the Revised Federal Power Commission Act, the Natural Gas Act, etc. In other cases, certain industries have voluntarily made changes in the conduct of their business following disclosures of uneconomic and harmful competitive trade practices.

(e) This division also furnishes general economic information, including industry-wide costs of production and of distribution and makes special reports to the Commission for submission to the President, the Congress, and to various government departments and agencies. The personnel of the division includes accountants, economists and statisticians, and as a regular part of its work,

members of its staff may be called upon to act as expert witnesses, to advise and consult with the Commission's attorneys, and to prepare accounting, economic, and statistical analyses in connection with legal cases. This is particularly true with respect to basing point and Robinson-Patman cases. The latter cases involve accounting and statistical problems particularly where differences in costs are used as a justification for price differences.

Promulgated as of this date in pursuance of the action of the Federal Trade Commission under date of July 16, 1947, and August 6, 1947, effective on date of publication thereof in the FEDERAL REGISTER.

By direction of the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 47-7525; Filed, Aug. 11, 1947; 8:46 a. m.]

TITLE 24—HOUSING CREDIT

Chapter VIII—Office of Housing Expediter

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947

CONTROLLED HOUSING [1]

Amendment 1 to the Controlled Housing Rent Regulation. Controlled Housing Rent Regulation (§ 825.1) is amended in the following respects:

1. Section 1, *Definitions and scope of this regulation,* paragraph (12) headed "Hotel" is amended to read as follows:

"Hotel" means any establishment which is commonly known as a hotel in the community in which it is located and which provides customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

2. Section 1 (b) (7) is amended to read as follows:

(7) *Accommodations in hotels, motor courts and tourist homes.* (i) Housing accommodations in a hotel (See definition of hotel in section 1) which are occupied by persons who are provided customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy services; (ii) housing accommodations in motor courts; and (iii) housing accommodations in any tourist home serving transient guests, exclusively: *Provided, however* That all such housing accommodations except housing accommodations in motor courts referred to in this paragraph shall be subject to this regulation unless the landlord files in the area rent office an application for decontrol of such accommodations on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after such date of first renting, whichever is the later: *And provided, further* That if a landlord fails to file said application for decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said application.

3. Section 1 (b) (8) is amended to read as follows:

(8) *Accommodations first offered for rent.* (i) Housing accommodations, the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, *Provided, however* That maximum rents established under the Veterans' Emergency Housing Act for priority constructed housing accommodations completed on or after February 1, 1947, shall continue in full force and effect if such accommodations are being rented to veterans of World War II or their immediate families who, on June 30, 1947, either (*a*) occupied such housing accommodations, or (*b*) had a right to occupy such housing accommodations at any time on or after July 1, 1947, under any agreement whether written or oral; (ii) Housing accommodations which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations: *Provided, however* That all housing accommodations referred to in this paragraph (8) shall be subject to this regulation unless the landlord files in the area rent office a report of decontrol on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: and *Provided further* That if a landlord fails to file said report of decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said report.

For the purposes of this paragraph (8) the time at which construction of housing accommodations shall be deemed to be "completed" shall be the date on which the dwelling is first suitable for occupancy and all utility and service connections have been made, except for the installation of such items and the completion of such decoration work as, in accordance with the custom of the community, are left for installation by, or to the choice of, the purchaser or the tenant.

For the purposes of this paragraph (8) the word "conversion" means (1) a change in a structure from a non-housing to a housing use or (2) a structural change in a residential unit or units involving substantial alterations or remodeling and resulting in the creation of additional housing accommodations.

4. Section 2 (c) (8) is amended to read as follows:

(8) Notwithstanding the preceding provisions of this paragraph (c) any landlord may demand, receive and retain as a security deposit, the rent for the last rental period of the term, not exceeding one month, where a newly constructed housing accommodation is, or was, rented and occupied for the first time after March 25, 1947, fully furnished, under a written lease, or where such newly constructed housing accommodation was rented and occupied for the first time on or prior to March 25, 1947, fully furnished, under a written lease, and was constructed with a priority rating or under specific authorization by the United States or any agency thereof for which the rent was approved by the United States or any agency thereof and the entire project covered by the single priority application of which the housing accommodation was a part was not completed until after March 25, 1947.

5. The third unnumbered paragraph of section 5 is amended to read as follows:

In all other cases except those under paragraphs (a) (7) (a) (12), (a) (13), (a) (14) (a) (15) (c) (6), and (c) (8) of this section, the adjustment shall be on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date: *Provided,* That in cases under paragraphs (a) (6) and (c) (5) of this section, the adjustment may be on the basis of the rental agreement in force on the date determining the maximum rent: *Provided, further,* That in cases under sections 5 (a) (3) and 5 (c) (3) involving an increase or decrease in living space, the adjustment shall be either the amount the Expediter finds would have been on the maximum rent date the difference in the rental value of the housing accommodations by reason of such change or on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date, whichever is higher: *And provided, further,* That in cases under section 5 (i) the adjustment shall be in the amount necessary to correct the error.

6. Section 5 is amended by adding the following subsection:

(i) *Adjustment to correct determinations of maximum rent.* The Expediter at any time on petition of the landlord or on his own initiative may enter an order adjusting the maximum rent where the maximum rent in effect on June 30, 1947, was established by an order issued under the rent regulations issued pursuant to the Emergency Price Control Act of 1942, as amended, and such order was based upon an erroneous determination of fact or law.

This amendment shall become effective this 8th day of August 1947.

Issued this 8th day of August 1947.

OFFICE OF THE HOUSING EXPEDITER,
By JAMES V SARCONE,
Authorizing Officer

[F. R. Doc. 47-7592; Filed, Aug. 8, 1947; 4:45 p. m.]

[1] 12 F.R. 4331.

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947

CONTROLLED HOUSING FOR NEW YORK CITY DEFENSE-RENTAL AREA[1]

Amendment 1 to Controlled Housing Rent Regulation for New York City Defense-Rental Area. The Controlled Housing Rent Regulation for New York City Defense-Rental Area (§ 825.2) is amended in the following respects:

1. Section 1 *Definitions and scope of this regulation,* paragraph (12) headed "Hotel" is amended to read as follows:

"Hotel" means any establishment which is commonly known as a hotel in the community in which it is located and which provides customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

2. Section 1 (b) (7) is amended to read as follows:

(7) *Accommodations in hotels, motor courts and tourist homes.* (i) Housing accommodations in any establishment which is commonly known as a hotel (See definition of hotel in section 1) in the community in which it is located, which are occupied by persons who are provided hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; (ii) housing accommodations in motor courts; and (iii) housing accommodations in any tourist home serving transient guests, exclusively. *Provided, however* That all such housing accommodations, except housing accommodations in motor courts, referred to in this paragraph shall be subject to this regulation unless the landlord files in the area office an application for decontrol of such accommodations on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after such date of first renting, whichever is the later: and *Provided, further* That if a landlord fails to file said application for decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said application.

3. Section 1 (b) (8) is amended to read as follows:

(8) *Accommodations first offered for rent.* (i) Housing accommodations, the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, *Provided, however* That maximum rents established under the Veterans' Emergency Housing Act for priority constructed housing accommodations completed on or after February 1, 1947, shall continue in full force and effect if such accommodations are being rented to veterans of World War II or their immediate families who, on June 30, 1947, either (a) occupied such housing accommodations, or (b) had a right to occupy such housing accommodations at any time on or after July 1, 1947, under any agreement whether written or oral; (ii) Housing accommodations which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations: *Provided, however,* That all housing accommodations referred to in this paragraph (8) shall be subject to this regulation unless the landlord files in the area rent office a report of decontrol on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: and *Provided further,* That if a landlord fails to file said report of decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said report.

For the purposes of this paragraph (8) the time at which construction of housing accommodations shall be deemed to be "completed" shall be the date on which the dwelling is first suitable for occupancy and all utility and service connections have been made, except for the installation of such items and the completion of such decoration work as, in accordance with the custom of the community, are left for installation by, or to the choice of, the purchaser or the tenant.

For the purposes of this paragraph (8) the word "conversion" means (1) a change in a structure from a non-housing to a housing use or (2) a structural change in a residential unit or units involving substantial alterations or remodeling and resulting in the creation of additional housing accommodations.

4. Section 2 (c) (8) is amended to read as follows:

(8) "Notwithstanding the preceding provisions of this paragraph (c), any landlord may demand, receive, and retain as a security deposit the rent for the last rental period of the term, not exceeding one month, where a newly constructed housing accommodation is, or was, rented and occupied for the first time after March 25, 1947, fully furnished, under a written lease, or where such newly constructed housing accommodation was rented and occupied for the first time on or prior to March 25, 1947, fully furnished, under a written lease, and was constructed with a priority rating or under specific authorization by the United States or any agency thereof for which the rent was approved by the United States or any agency thereof and the entire project covered by the single priority application of which the housing accommodation was a part was not completed until after March 25, 1947."

5. The 3rd unnumbered paragraph of Section 5 is amended to read as follows:

"In all other cases except those under paragraphs (a) (7) (a) (12), (a) (13), (a) (14), (a) (15), (c) (6) (c) (8) and (c) (9) of this section, the adjustment shall be on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date: *Provided,* That in cases under paragraphs (a) (6) and (c) (5) of this section, the adjustment may be on the basis of the rental agreement in force on the date determining the maximum rent: *Provided, further,* That in cases under sections 5 (a) (3) and 5 (c) (3) involving an increase or decrease in living space, the adjustment shall be either the amount the Expediter finds would have been on the maximum rent date the difference in the rental value of the housing accommodations by reason of such change or on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date, whichever is higher, and *Provided, further,* that in cases under Section 5 (i) the adjustment shall be in the amount necessary to correct the error."

6. Section 5 is amended by adding the following subsection:

(i) *Adjustment to correct determinations of maximum rent.* The Expediter at any time on petition of the landlord or on his own initiative may enter an order adjusting the maximum rent where the maximum rent in effect on June 30, 1947 was established by an order issued under the rent regulations issued pursuant to the Emergency Price Control Act of 1942, as amended, and such order was based upon an erroneous determination of fact or law.

This amendment shall be effective August 8, 1947.

Issued this 8th day of August 1947.

OFFICE OF THE HOUSING EXPEDITER,
By JAMES V. SARCONE,
Authorizing Officer.

[F. R. Doc. 47-7593; Filed, Aug. 8, 1947; 4:45 p. m.]

[1] 12 F. R. 4295.

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947

CONTROLLED HOUSING FOR THE MIAMI DEFENSE-RENTAL AREA[1]

Amendment 1 to the Controlled Housing Rent Regulation for the Miami Defense-Rental Area. The Controlled Housing Rent Regulation for the Miami Defense-Rental Area (§ 825.3) is amended in the following respects:

1. Section 1 *Definitions and scope of this regulation,* paragraph (12) headed "Hotel" is amended to read as follows:

"Hotel" means any establishment which is commonly known as a hotel in the community in which it is located and which provides customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

[1] 12 F. R. 4374.

2. Section 1 (b) (7) is amended to read as follows:

(7) *Accommodations in hotels, motor courts and tourist homes.* (i) Housing accommodations in a hotel (See definition of hotel in section 1) which are occupied by persons who are provided customary hotel services including maid service, furnishing and laundering of linens, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; (ii) housing accommodations in motor courts; and (iii) housing accommodations in any tourist home serving transient guests, exclusively· *Provided, however* That all such housing accommodations, except housing accommodations in motor courts, referred to in this paragraph shall be subject to this regulation unless the landlord files in the area rent office an application for decontrol of such accommodations on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after such date of first renting, whichever is the later: *And provided, further* That if a landlord fails to file said application for decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said application.

3. Section 1 (b) (8) is amended to read as follows:

(8) *Accommodations first offered for rent.* (i) Housing accommodations, the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, *Provided, however,* That·maximum rents established under the Veterans' Emergency Housing Act for priority constructed housing accommodations completed on or after February 1, 1947, shall continue in full force and effect if such accommodations are being rented to veterans of World War II or their immediate families who, on June 30, 1947, either (a) occupied such housing accommodations, or (b) had a right to occupy such housing accommodations at any time on or after July 1, 1947, under any agreement whether written or oral; (ii) housing accommodations which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations: *Provided, however* That all housing accommodations referred to in this paragraph (8) shall be subject to this regulation unless the landlord files in the area rent office a report of decontrol on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: *And provided further* That if a landlord fails to file said report of decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said report.

For the purposes of this paragraph (8) the time at which construction of housing accommodations shall be deemed to be "completed" shall be the date on which the dwelling is first suitable for occupancy and all utility and service connections have been made, except for the installation of such items and the completion of such decoration work as, in accordance with the custom of the community, are left for installation by, or to the choice of, the purchaser or the tenant.

For the purposes of this paragraph (8) the word "conversion" means (1) a change in a structure from a nonhousing to a housing use or (2) a structural change in a residential unit or units involving substantial alterations or remodeling and resulting in the creation of additional housing accommodations.

4. Section 2 (c) (7) is amended to read as follows:

(7) Nothwithstanding the preceding provisions of this paragraph (c) any landlord may demand, receive and retain as a security deposit, the rent for the last rental period of the term, not exceeding one month, where a newly constructed housing accommodation is, or was, rented and occupied for the first time after March 25, 1947, fully furnished, under a written lease, or where such newly constructed housing accommodation was rented and occupied for the first time on or prior to March 25, 1947, fully furnished, under a written lease, and was constructed with a priority rating or under specific authorization by the United States or any agency thereof for which the rent was approved by the United States or any agency thereof and the entire project covered by the single priority application of which the housing accommodation was a part was not completed until after March 25, 1947.

5. Section 5 is amended by adding the following paragraph to the unnumbered paragraphs:

In cases under paragraph (j) of this section the adjustment shall be in the amount necessary to correct the error.

6. Section 5 is amended by adding the following subsection:

(j) *Adjustment to correct determinations of maximum rent.* The Expediter at any time on petition of the landlord or on his own initiative may enter an order adjusting the maximum rent where the maximum rent in effect on June 30, 1947 was established by an order issued under the rent regulations issued pursuant to the Emergency Price Control Act of 1942, as amended, and such order was based upon an erroneous determination of fact or law.

This amendment shall become effective August 8, 1947.

Issued this 8th day of August 1947.

OFFICE OF THE HOUSING EXPEDITER,
By JAMES V SARCONE,
Authorizing Officer

[F. R. Doc. 47-7595; Filed, Aug. 8, 1947; 4:45 p. m.]

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947

CONTROLLED HOUSING FOR ATLANTIC COUNTY DEFENSE-RENTAL AREA [1]

Amendment 1 to the Controlled Housing Rent Regulation for Atlantic County Defense-Rental Area. The Controlled Housing Rent Regulation for Atlantic County Defense-Rental Area (§ 825.4) is amended in the following respects:

1. Section 1 *Definitions and scope of this regulation,* paragraph (12), headed "Hotel" is amended to read as follows:

"Hotel" means any establishment which is commonly known as a hotel in the community in which it is located and which provides customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

2. Section 1 (b) (7) is amended to read as follows:

(7) *Accommodations in hotels, motor courts, and tourist homes.* (i) Housing accommodations in a hotel (see definition of hotel in section 1) which are occupied by persons who are provided customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; (ii) housing accommodations in motor courts; and (iii) housing accommodations in any tourist home serving transient guests, exclusively· *Provided, however,* That all such housing accommodations, except housing accommodations in motor courts, referred to in this paragraph shall be subject to this regulation unless the landlord files in the area rent office an application for decontrol of such accommodations on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after such date of first renting, whichever is the later· *And provided further,* That if a landlord fails to file said application for decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said application.

3. Section 1 (b) (8) is amended to read as follows:

(8) *Accommodations first offered for rent.* (i) Housing accommodations, the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, *Provided, however,* That maximum rents established under the Veterans' Emergency Housing Act for priority constructed housing accommodations completed on or after February 1, 1947, shall continue in full force and effect if such accommodations are being rented to veterans of World War II or their immediate families who, on June 30, 1947, either (a) occupied such housing accommodations, or (b) had a right

[1] 12 F. R. 4381.

to occupy such housing accommodations at any time on or after July 1, 1947, under any agreement whether written or oral; (ii) Housing accommodations which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations: *Provided, however* That all housing accommodations referred to in this paragraph (8) shall be subject to this regulation unless the landlord files in the area rent office a report of decontrol on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: and *Provided further* That if a landlord fails to file said report of decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said report.

For the purposes of this paragraph (8) the time at which construction of housing accommodations shall be deemed to be "completed" shall be the date on which the dwelling is first suitable for occupancy and all utility and service connections have been made, except for the installation of such items and the completion of such decoration work as, in accordance with the custom of the community, are left for installation by, or to the choice of, the purchaser or the tenant.

For the purposes of this paragraph (8) the word "conversion" means (1) a change in a structure from a non-housing to a housing use or (2) a structural change in a residential unit or units involving substantial alterations or remodeling and resulting in the creation of additional housing accommodations.

4. Section 2 (c) (8) is amended to read as follows:

(8) Notwithstanding the preceding provisions of this paragraph (c) any landlord may demand, receive, and retain as a security deposit, the rent for the last rental period of the term, not exceeding one month, where a newly constructed housing accommodation is, or was, rented and occupied for the first time after March 25, 1947, fully furnished, under a written lease, or where such newly constructed housing accommodation was rented and occupied for the first time on or prior to March 25, 1947, fully furnished, under a written lease, and was constructed with a priority rating or under specific authorization by the United States or any agency thereof for which the rent was approved by the United States or any agency thereof and the entire project covered by the single priority application of which the housing accommodation was a part was not completed until after March 25, 1947.

5. The third unnumbered paragraph of section 5 is amended to read as follows:

In all other cases except those under paragraphs (a) (7) (a) (12) (a) (13), (a) (14) (a) (15) (c) (6) and (c) (8) of this section, the adjustment shall be on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date: *Provided,* That in cases under paragraphs (a) (6) and (c) (5) of this section, the adjustment may be on the basis of the rental agreement in force on the date determining the maximum rent: *Provided further,* That in cases under section 5 (a) (3) and 5 (c) (3) involving an increase or decrease in living space the adjustment shall be either the amount the Expediter finds would have been on the maximum rent date the difference in the rental value of the housing accommodations by reason of such change or on the basis of the rent which the Expediter finds was generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent date, whichever is higher: *Provided further* That in cases under section 5 (i) the adjustment shall be in the amount necessary to correct the error.

6. Section 5 is amended by adding the following subsection (i)

(i) *Adjustment to correct determinations of maximum rent.* The Expediter at any time on petition of the landlord or on his own initiative may enter an order adjusting the maximum rent where the maximum rent in effect on June 30, 1947, was established by an order issued under the rent regulations issued pursuant to the Emergency Price Control Act of 1942, as amended, and such order was based upon an erroneous determination of fact or law.

This amendment shall be effective as of August 8, 1947.

Issued this 8th day of August 1947.

OFFICE OF THE HOUSING EXPEDITER,
By JAMES V. SARCONE,
Authorizing Officer.

[F. R. Doc. 47-7594; Filed, Aug. 8, 1947; 4:45 p. m.]

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947

CONTROLLED ROOMS IN ROOMING HOUSES AND OTHER ESTABLISHMENTS [1]

Amendment 1 to Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments. The Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments (§ 825.5) is amended in the following respects:

1. In section 1 the fourteenth unnumbered paragraph, headed "Hotel" is amended to read as follows:

"Hotel" means any establishment which is commonly known as a hotel in the community in which it is located and which provides customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

2. Section 1 (b) (8) is amended to read as follows:

(8) *Rooms in hotels, motor courts, tourist homes, and other establishments.* (i) Rooms in a "hotel" (See definition of "hotel" in section 1) which are occupied by persons who are provided customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service; (ii) rooms in any motor court; (iii) rooms in any tourist home serving transient guests, exclusively; (iv) rooms in other establishments (See definition of "other establishments" in section 1) which are occupied by persons who are provided customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy services: *Provided, however,* That all such rooms, except rooms in motor courts, referred to in this paragraph shall be subject to this regulation unless the landlord files in the area rent office an application for decontrol of such rooms on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: *And provided, further,* That if a landlord fails to file said application for decontrol within the applicable specified period, such rooms shall be and remain subject to the provisions of this regulation until the date on which he files said application.

3. Section 1 (b) (9) is amended to read as follows:

(9) *Newly constructed rooms or converted rooms.* (i) Rooms, the construction of which was completed on or after February 1, 1947, or which are additional accommodations created by conversion on or after February 1, 1947, *Provided, however* That maximum rents established under the Veterans' Emergency Housing Act for priority constructed housing accommodations completed on or after February 1, 1947, shall continue in full force and effect if such accommodations are being rented to veterans of World War II or their immediate families who, on June 30, 1947, either (a) occupied such housing accommodations, or (b) had a right to occupy such housing accommodations at any time on or after July 1, 1947, under any agreement whether written or oral; or (ii) rooms which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented either as individual rooms or as part of a larger housing accommodations (other than to members of the immediate family of the occupant) *Provided, however,* That all such rooms referred to in this paragraph (9) shall be subject to this regulation unless the landlord files in the area rent office a report of decontrol on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: *And provided, further,* That if a landlord fails to file said report of decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the pro-

[1] 12 F. R. 4302.

visions of this regulation until the date on which he files said report.

For the purposes of this paragraph (9) the time at which construction of a room shall be deemed to be "completed" shall be the date on which the room is first suitable for occupancy.

For the purposes of this paragraph (9) the word "conversion" means (1) a change from non-housing to a housing use or (2) a structural change in a residential unit or units involving substantial alterations or remodeling and resulting in the creation of additional housing accommodations.

4. The third unnumbered paragraph of section 5 is amended by changing the period to a colon at the end of the paragraph and then adding the following: *"Provided, further* That in cases under section 5 (g) the adjustment shall be in the amount necessary to correct the error."

5. The first paragraph of section 5 (a) (9) is amended to read as follows:

(9) *Substantial hardship from increase in property taxes or operating costs.* Substantial hardship has resulted from a decrease in the net income (before interest) of the property for the current year as compared with a prior representative period, due to an unavoidable increase in property taxes or operating costs.

6. The third unnumbered paragraph of section 5 (a) (9) is amended by adding the following subparagraph (vi)

(vi) "Prior representative period" means any period of two consecutive years prior to the "current year" but not beginning before January 1, 1939, which the Expediter finds to be representative of the property's normal operation: *Provided, however* That where a representative period of two consecutive years is not available the Expediter in his discretion may for the purposes of this section accept a representative period of not less than one year.

7. Section 5 is amended by adding the following paragraph (g)

(g) *Adjustment to correct determinations of maximum rent.* The Expediter at any time on petition of the landlord or on his own initiative may enter an order adjusting the maximum rent where the maximum rent in effect on June 30, 1947, was established by an order issued under the rent regulations promulgated pursuant to the Emergency Price Control Act of 1942, as amended, and such order was based upon an erroneous determination of fact or law.

This amendment shall be effective this 8th day of August 1947.

Issued this 8th day of August 1947.

OFFICE OF THE HOUSING EXPEDITER,
By JAMES V SARCONE,
Authorizing Officer.

[F. R. Doc. 47-7598; Filed, Aug. 8, 1947; 4:46 p. m.]

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947

CONTROLLED ROOMS IN ROOMING HOUSES AND OTHER ESTABLISHMENTS IN NEW YORK CITY DEFENSE-RENTAL AREA [1]

Amendment 1 to Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments in New York City Defense-Rental Area. The Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments in New York City Defense-Rental Area (§ 825.6) is amended in the following respects:

1. In section 1 the fourteenth unnumbered paragraph, headed "Hotel" is amended to read as follows:

"Hotel" means any establishment which is commonly known as a hotel in the community in which it is located and which provides customary hotel services, including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

2. Section 1 (b) (8) is amended to read as follows:

(8) *Rooms in hotels, motor courts, tourist homes, and other establishments.* (i) Rooms in a "hotel" (See definition of "hotel" in section 1) which are occupied by persons who are provided customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service; (ii) Rooms in any motor court; (iii) Rooms in any tourist home serving transient guests, exclusively; (iv) Rooms in other establishments (See definition "other establishments" in section 1) which are occupied by persons who are provided customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy services: *Provided, however* That all such rooms except rooms in motor courts referred to in this paragraph shall be subject to this regulation unless the landlord files in the area rent office an application for decontrol of such rooms on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: *And provided further* That if a landlord fails to file said application for decontrol within the applicable specified period, such rooms shall be and remain subject to the provisions of this regulation until the date on which he files said application.

3. Section 1 (b) (9) is amended to read as follows:

(9) *Newly Constructed rooms or converted rooms.* (i) Rooms, the construction of which was completed on or after February 1, 1947, or which are additional accommodations created by conversion on or after February 1, 1947, *Provided, however,* That maximum rents established under the Veterans' Emergency Housing Act for priority constructed housing accommodations completed on or after February 1, 1947, shall continue in full force and effect if such accommodations are being rented to veterans of World War II or their immediate families who, on June 30, 1947, either (*a*) occupied such housing accommodations, or (*b*) had a right to occupy such housing accommodations at any time on or after July 1, 1947, under any agreement whether written or oral; or (ii) rooms which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented either as individual rooms or as part of a larger housing accommodation (other than to members of the immediate family of the occupant) *Provided, however,* That all such rooms referred to in this paragraph (9) shall be subject to this regulation unless the landlord files in the area rent office a report of decontrol on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later; *And provided, further* That if a landlord fails to file said report of decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said report.

For the purposes of this paragraph (9) the time at which construction of a room shall be deemed to be "completed" shall be the date on which the room is first suitable for occupancy.

For the purpose of this paragraph (9), the word "conversion" means (1) a change from non-housing to a housing use or (2) a structural change in a residential unit or units involving substantial alterations or remodeling and resulting in the creation of additional housing accommodations.

4. Section 5, the third unnumbered paragraph, is amended by changing the period to a colon at the end of the paragraph and then adding the following:

Provided, further, That in cases under section 5 (g) the adjustment shall be in the amount necessary to correct the error.

5. Section 5 (a) (9), first paragraph, is amended to read as follows:

(9) *Substantial hardship from increase in property taxes or operating costs.* Substantial hardship has resulted from a decrease in the net income (before interest) of the property for the current year as compared with a prior representative period, due to an unavoidable increase in property taxes or operating costs.

6. Section 5 (a) (9), the third unnumbered paragraph, is amended by adding the following subparagraph (vi)

(vi) "Prior representative period" means any period of two consecutive years prior to the "current year" but not beginning before January 1, 1939 which the Expediter finds to be representative of the property's normal operation:

[1] 12 F. R. 4318.

Provided, however That where a representative period of two consecutive years is not available the Expediter in his discretion may for the purposes of this section accept a representative period of not less than one year.

7. Section 5 is amended by adding the following paragraph (g)

(g) *Adjustment to correct determinations of maximum rent.* The Expediter at any time on petition of the landlord or on his own initiative may enter an order adjusting the maximum rent where the maximum rent in effect on June 30, 1947 was established by an order issued under the rent regulations promulgated pursuant to the Emergency Price Control Act of 1942, as amended, and such order was based upon an erroneous determination of fact or law.

This amendment shall be effective August 8, 1947.

Issued this 8th day of August 1947.

OFFICE OF THE HOUSING EXPEDITER,
By JAMES V. SARCONE,
Authorizing Officer.

[F. R. Doc. 47-7596; Filed, Aug. 8, 1947; 4:45 p. m.]

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947

CONTROLLED ROOMS IN ROOMING HOUSES AND OTHER ESTABLISHMENTS IN MIAMI DEFENSE-RENTAL AREA [1]

Amendment 1 to Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments in Miami Defense-Rental Area. The Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments in Miami Defense-Rental Area (§ 825.7) is amended in the following respects:

1. In section 1, the 14th unnumbered paragraph, headed "Hotel" is amended to read as follows:

"Hotel" means any establishment which is commonly known as a hotel in the community in which it is located and which provides customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

2. Section 1 (b) (8) is amended to read as follows:

(8) *Rooms in hotels, motor courts, tourist homes, and other establishments.* (i) Rooms in a "hotel" (See definition of "hotel" in section 1) which are occupied by persons who are provided customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures and bellboy service; (ii) Rooms in any motor court; (iii) Rooms in any tourist home serving transient guests, exclusively; (iv) Rooms in other establishments (See definition "other establishments" in section 1) which are occupied by persons who are provided customary hotel services including maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures; and bellboy services; *Provided, however,* That all such rooms, except rooms in motor courts, referred to in this paragraph shall be subject to this regulation unless the landlord files in the area rent office an application for decontrol of such rooms on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later: *And provided, further,* That if a landlord fails to file said application for decontrol within the applicable specified period, such rooms shall be and remain subject to the provisions of this regulation until the date on which he files said application.

3. Section 1 (b) (9) is amended to read as follows:

(9) *Newly constructed rooms or converted rooms.* (i) Rooms, the construction of which was completed on or after February 1, 1947, or which are additional accommodations created by conversion on or after February 1, 1947, *Provided, however* That maximum rents established under the Veterans' Emergency Housing Act for priority constructed housing accommodations completed on or after February 1, 1947, shall continue in full force and effect if such accommodations are being rented to veterans of World War II or their immediate families who, on June 30, 1947, either (a) occupied such housing accommodations, or (b) had a right to occupy such housing accommodations at any time on or after July 1, 1947, under any agreement whether written or oral; or (ii) rooms which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented either as individual rooms or as part of a larger housing accommodation (other than to members of the immediate family of the occupant) *Provided, however* That all such rooms referred to in this paragraph (9) shall be subject to this regulation unless the landlord files in the area rent office a report of decontrol on a form provided by the Expediter within 60 days after July 1, 1947, or within 30 days after the date of first renting, whichever is the later; and *Provided further,* That if a landlord fails to file said report of decontrol within the applicable specified period, such housing accommodations shall be and remain subject to the provisions of this regulation until the date on which he files said report.

For the purposes of this paragraph (9) the time at which construction of a room shall be deemed to be "completed" shall be the date on which the room is first suitable for occupancy.

For the purposes of this paragraph (9) the word "conversion" means (1) a change from non-housing to a housing use or (2) a structural change in a residential unit or units involving substantial alterations or remodeling and resulting in the creation of additional housing accommodations.

4. Section 5, the third unnumbered paragraph, is amended by changing the period to a colon at the end of the paragraph and then adding the following: *"Provided, further,* That in cases under section 5 (g) the adjustment shall be in the amount necessary to correct the error."

5. Section 5 (a) (9) first paragraph, is amended to read as follows:

(9) *Substantial hardship from increase in property taxes or operating costs.* Substantial hardship has resulted from a decrease in the net income (before interest) of the property for the current year as compared with a prior representative period, due to an unavoidable increase in property taxes or operating costs.

6. Section 5 (a) (9), the third unnumbered paragraph, is amended by adding the following subparagraph (vi)

(vi) "Prior representative period" means any period of two consecutive years prior to the "current year" but not beginning before January 1, 1939 which the Expediter finds to be representative of the property's normal operation: *Provided, however,* That where a representative period of two consecutive years is not available the Expediter in his discretion may for the purposes of this section accept a representative period of not less than one year.

7. Section 5 is amended by adding the following paragraph (g)

(g) *Adjustment to correct determinations of maximum rent.* The Expediter at any time on petition of the landlord or on his own initiative may enter an order adjusting the maximum rent where the maximum rent in effect on June 30, 1947 was established by an order issued under the rent regulations promulgated pursuant to the Emergency Price Control Act of 1942, as amended, and such order was based upon an erroneous determination of fact or law.

This amendment shall be effective August 8, 1947.

Issued this 8th day of August 1947.

OFFICE OF THE HOUSING EXPEDITER,
By JAMES V. SARCONE,
Authorizing Officer.

[F. R. Doc. 47-7597; Filed, Aug. 8, 1947; 4:45 p. m.]

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 7—PROCEDURE; OFFICE FOR THE REGISTRATION OF LABOR ORGANIZATIONS

FORMS FOR FILING REPORTS

Pursuant to the authority vested in the Secretary of Labor by sections 9 (f) and (g) of the Labor-Management Relations Act, 1947 (Public 101, Ch. 120, 80th Cong., 1st sess.) this subtitle is amended by adding Part 7 and § 7.1 as follows:

[1] 12 F. R. 4325.

§ 7.1 *Form to be used in filing reports.* The form, entitled "Labor Organization Registration Form [1]" is hereby prescribed as the form for filing of organizational and financial reports by labor organizations with the Office for the Registration of Labor Organizations, United States Department of Labor, Washington 25, D. C., under sections 9 (f) and 9 (g) of the Labor-Management Relations Act, 1947. (Secs. 9 (f) 9 (g) Pub. Law 101, 80th Cong.)

Signed at Washington, D. C., this 5th day of August 1947.

L. B. SCHWELLENBACH,
Secretary of Labor.

Budget Bureau No. 44–R700
Approval expires July 1, 1949

LABOR ORGANIZATION REGISTRATION FORM

(PUBLIC LAW 101—80TH CONGRESS)

To: Office for the Registration of Labor Organizations, United States Department of Labor Washington 25, D. C.

Sections 9 (f) and (g) of the Labor-Management Relations Act, 1947 (Public Law No. 101, 80th Congress, 1st sess.) require that the following information be filed and kept up to date annually with the Secretary of Labor before the National Labor Relations Board may investigate any representation question raised by the labor organization, or entertain any petition for a union-shop election, or issue any complaint pursuant to an unfair practice charge filed by a labor organization. This report must be filed not only by any labor organization desiring to raise any such question before the Board but also by any national or international labor organization of which such labor organization is an affiliate or constituent part.

1. Full name of organization: _____
_____
(Name) (Local number, if any)

2. Principal business address: _____
_____

3. Name and address of parent national or international union: _____
_____ (If none, check (.))

4. (a) List the names, titles, and compensation and allowances of your three (3) principal officers and indicate the manner in which they are elected or appointed or otherwise selected. Show compensation and allowances for the preceding fiscal year in each case.

	Name and title	Compensation and allowances	Manner in which selected
(1)			
(2)			
(3)			

4. (b) Attach a list showing the names, titles, and compensation and allowances of all other officers or agents whose aggregate compensation and allowances for the preceding fiscal year exceeded $5,000 and indicate the manner in which such officials or agents were elected, appointed, or otherwise selected. Show compensation and allowances for the preceding fiscal year in each case.

5. The initiation fee or fees which new members are required to pay to join the union is $_____.* (See footnote)

6. The regular dues or fees which members must pay to remain in good standing are: $_____ per _____.* (See footnote)
(Month, year, etc.)

7. *A copy of the constitution and by-laws of your organization is required to accompany this registration form.* Please indicate which paragraphs or sections of your constitution and by-laws show the procedure followed with respect to the items listed below: If your constitution does not cover each of the items specified, a detailed statement explaining the procedure followed by your organization with respect to the items not covered should be attached to this reply form and marked with the corresponding item numbers.

(a) Qualifications for or restrictions on membership_____
(b) Election of officers and stewards_____
(c) Calling of regular and special meetings_____
(d) Levying of assessments_____
(e) Imposition of fines_____
(f) Authorization for bargaining demands_____
(g) Ratification of contract terms_____
(h) Authorization for strikes_____
(i) Authorization for disbursement of union funds_____
(j) Audit of union financial transactions_____
(k) Participation in insurance or other benefit plans_____
(l) Expulsion of members and the grounds therefor_____

8. Submit with this registration a report showing (a) the beginning and closing dates of your fiscal year; (b) all of your receipts of any kind and the sources of such receipts for the fiscal year; (c) your total assets and liabilities as of the end of your last fiscal year; and (d) your disbursements made during such fiscal year, including the purposes for which made. The annual financial report prepared by most unions may be used for this purpose as long as such report contains the above information.

I, a duly authorized official of the above named union, certify that the information submitted herewith is true to the best of my knowledge and belief.

_____
(Date)

_____
(Signature)

_____
(Official position)

[SEAL]

Office for the Registration of Labor Organizations, United States Department of Labor

Received by_____ _____
(Signature) (Date)

[F. R. Doc. 47-7472; Filed, Aug. 8, 1947; 8:45 a. m.]

[1] Forms may be obtained at Office for the Registration of Labor Organizations at Department of Labor.

* (In case of a national or international union, specify any regulation regarding fees or dues.)

TITLE 31—MONEY AND FINANCE: TREASURY

Subtitle A—Office of the Secretary of the Treasury

PART 1—OFFICE OF THE SECRETARY, AND BUREAUS, DIVISIONS, AND OFFICES PERFORMING CHIEFLY STAFF AND SERVICE FUNCTIONS

MISCELLANEOUS AMENDMENTS

1. Paragraph (c) of § 1.3 is amended to read as follows:

§ 1.3 *Assistant Secretaries.* * * *

(c) The office of the second Assistant Secretary is at the present vacant.

2. Section 1.7 is amended to read as follows:

§ 1.7 *Special Assistants to the Secretary.* By Treasury Department Order No. 88, July 10, 1947, a Special Assistant to the Secretary, reporting directly to the Secretary, shall perform such functions and duties as may be assigned from time to time.

3. Section 1.12 is amended to read as follows:

§ 1.12 *Office of International Finance.* (a) The Office of International Finance was established by Treasury Department Order No. 86, July 10, 1947, which abolished the Division of Monetary Research and transferred to the Office of International Finance Foreign Funds Control and the functions, duties, and personnel of the Division of Monetary Research. The Office is headed by a Director, who is appointed by and reports directly to the Secretary. There are three Assistant Directors, one of whom serves as Director of Foreign Funds Control. For description of the organization and functions of Foreign Funds Control, see Part 138 of this title.

(b) The Director, Office of International Finance, is responsible for advising and assisting the Secretary of the Treasury in the formulation and execution of policies and programs relating to the responsibilities of the Treasury Department in the international financial and monetary field, including the policies and programs arising in connection with the following:

(1) The Bretton Woods Agreements Act, the National Advisory Council on International Monetary and Financial Problems, the International Monetary Fund, the International Bank for Reconstruction and Development and all other matters related to foreign lending, financial, monetary, or exchange activities;

(2) The Anglo-American Financial Agreement and other international loans and financial assistance programs of this Government;

(3) The administration of Foreign Funds Control pursuant to sections 3 and 5 (b) of the Trading with the Enemy Act, as amended, and any proclamations, orders, regulations, or rulings that have been or may be issued thereunder;

(4) Administration and operation of the United States Exchange Stabilization Fund;

(5) Statutes and regulations relating to gold, silver, exchange rates, exchange stabilization operations and agreements, acquisition and disposition of foreign currencies, international capital movements, monetary policy, the position of the dollar in relation to foreign currencies, and international trade and commercial policy, including trade agreements, anti-dumping measures, and countervailing duties;

(6) The financial aspects of international treaties, agreements, organizations, or operations in which the United States Government participates;

(7) Foreign areas controlled or administered by the United States Government;

(8) Obtaining current information concerning the financial position and exchange and other controls of foreign countries and developments in their financial and economic life having a bear-

ing upon the United States financial or monetary policy, and preparing analyses and recommendations based thereon;

(9) Conducting negotiations with foreign governments with respect to the foregoing responsibilities;

(10) Maintaining such Treasury representatives abroad as may be required to assist in discharging the foregoing responsibilities, and directing and coordinating their activities.

4. Paragraph (c) of § 1.14 is amended by substituting for the words "Divisions of Monetary Research and Tax Research" the words "Office of International Finance and the Division of Tax Research"

5. Paragraph (a) (5) of § 1.25 (12 F. R. 772) is amended to read as follows:

§ 1.25 *Delegations of authority.* (a) * * *

(5) To the Director, Office of International Finance, by Treasury Department Orders Nos. 86 and 87, dated July 10, 1947, the supervision of Foreign Funds Control.

6. Paragraph (a) of § 1.26 is amended by substituting for the words "Division of Monetary Research" in the third sentence the words "Office of International Finance (other than Foreign Funds Control)"

7. Paragraph (c) of § 1.26 is amended by substituting for the words "Division of Monetary Research" the words "Office of International Finance (other than Foreign Funds Control, which is treated separately in Part 138 of this title)"

(R. S. 161, 5 U. S. C. 22)

[SEAL] A. L. M. WIGGINS,
Acting Secretary of the Treasury.

[F. R. Doc. 47-7528; Filed, Aug. 11, 1947; 8:53 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter VI—Office of Selective Service Records

[Amdt. 3]

PART 602—DEFINITIONS

REGISTRANT'S FILE

Pursuant to authority contained in Public Law 26, 80th Congress, approved March 31, 1947, the Office of Selective Service Records Regulations, First Edition, are hereby amended in the following respect:

Add § 602.9 to read as follows:

§ 602.9 *Registrant's file.* A registrant's file will be construed to include (a) his Registration Card (DSS Form 1) (b) his Cover Sheet (DSS Form 53) and contents, and (c) any and all information relating to the individual which is contained in the files of the Records Depot. (Pub. Law 26, 80th Congress)

The foregoing amendment to the Office of Selective Service Records Regulations shall be effective immediately upon the filing hereof with the Division of the Federal Register.

LEWIS B. HERSHEY,
Director.

AUGUST 6, 1947.

[F. R. Doc. 47-7522; Filed, Aug. 11, 1947; 8:46 a. m.]

[Amdt. 2]

PART 606—GENERAL ADMINISTRATION

CONFIDENTIAL RECORDS AND INFORMATION

Pursuant to authority contained in Public Law 26, 80th Congress, approved March 31, 1947, the Office of Selective Service Records Regulations, First Edition, are hereby amended in the following respect:

1. Amend § 606.4 to read as follows:

§ 606.4 *What records confidential.* Except as in these regulations provided, and in Operations Orders issued pursuant thereto, all records in Federal Record Depots of the Office of Selective Service Records shall be confidential.

2. Amend § 606.5 by designating the existing text as paragraph (a) and by adding paragraph (b), as follows:

§ 606.5 *Information not confidential as to persons.* (a) * * *

(b) Information in documents not contained in registrants' files may be disclosed or furnished to, or examined by persons having specific written authority from the Director, but only when and to the extent of such specific authority.

(Pub. Law 26, 80th Cong.)

The foregoing amendment to the Office of Selective Service Records Regulations shall be effective immediately upon the filing hereof with the Division of the Federal Register.

LEWIS B. HERSHEY,
Director.

AUGUST 6, 1947.

[F. R. Doc. 47-7521; Filed, Aug. 11, 1947; 8:46 a. m.]

Chapter VIII—Office of International Trade, Department of Commerce

Subchapter B—Export Control

[Amdt. 347]

PART 801—GENERAL REGULATIONS

PROHIBITED EXPORTATIONS

Section 801.2 *Prohibited exportations* is amended as follows:

The list of commodities set forth in paragraph (b) is amended in the following particulars:

1. The following commodities are hereby deleted from the list of commodities:

Dept. of Comm. Sched. B No.	*Commodity*
	Steel mill products:
604800	Metal lath (expanded metal).
	Chemical specialties:
823900	Chromium tanning mixtures.
	Industrial chemicals:
835900	Superphosphates.
	Fertilizers and fertilizer materials:
	Phosphatic fertilizer materials:
851901	Normal (standard) superphosphate, containing not more than 25 percent available phosphoric acid (P_2O_5).
851909	Concentrated superphosphate, containing more than 25 percent available phosphoric acid (P_2O_5).

2. By adding a qualifying footnote reference meaning "Requires a validated license for export to all areas except the Philippine Islands and all countries in North and South America as listed in Schedule C of the Bureau of the Census, U. S. Department of Commerce" with respect to the following commodities:

Dept. of Comm. Sched. B No.	*Commodity*
	Industrial chemicals:
835800	Potassium hydroxide or caustic potash.
835900	Potassium carbonate and mixtures.
835900	Potassium nitrate.
835900	Potassium nitrate mixtures except potassium nitrate powders (black saltpeter powder).
835900	Potassium chlorate and mixtures.
835900	Potassium perchlorate and mixtures.
835900	Potassium sulfate, technical grade.
835900	Potassium chloride, technical grade.
	Fertilizers and fertilizer materials:
	Potassic fertilizer materials:
853000	Potassium chloride.
853100	Potassium sulfate.

(Sec. 6, 54 Stat. 714, 55 Stat. 206, 56 Stat. 463, 58 Stat. 671, 59 Stat. 270, 60 Stat. 215, Pub. Law 145, 80th Cong., Pub. Law 188, 80th Cong., 50 U. S. C. App. & Sup. 701, 702; E. O. 9630, Sept. 27, 1945, 10 F. R. 12245)

Dated: July 30, 1947.

FRANCIS MCINTYRE,
Director
Export Control Branch.

[F. R. Doc. 47-7504; Filed, Aug. 11, 1947; 8:55 a. m.]

TITLE 34—NAVY

Chapter I—Department of the Navy

PART 9—EXECUTIVE ORDERS, PROCLAMATIONS, AND PUBLIC LAND ORDERS APPLICABLE TO THE NAVY

NEVADA

CROSS REFERENCE: For revocation of Public Land Order 266 withdrawing public lands for the use of the Navy Department as a target range, which is noted in the tabulation in § 9.6, see Public Land Order 391 in Title 43, *infra.*

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 387]

NEW MEXICO

REVOKING PUBLIC LAND ORDER NO. 9 OF JULY 3, 1942, WITHDRAWING PUBLIC LANDS FOR USE OF THE WAR DEPARTMENT AS PRACTICE BOMBING RANGES

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Public Land Order No. 9 of July 3, 1942, as amended by Executive Order No. 9526 of February 28, 1945, withdrawing the hereinafter-described public lands for the use of the War Department as practice bombing ranges is hereby revoked.

The jurisdiction over and use of such lands granted to the War Department by Public Land Order No. 9 shall cease

upon the date of the signing of this order. Thereupon, the jurisdiction over and administration of such lands shall be vested in the Department of the Interior and any other Department or agency of the Federal Government according to their respective interests then of record.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on October 3, 1947.

At that time the lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-day period for preference-right filings.* For a period of 90 days from October 3, 1947, to January 2, 1948, inclusive, the public lands affected by this order shall be subject to (1) application under the homestead or the desert land laws, or the small tract act of June 1, 1938 (52 Stat. 609, 43 U. S. C. sec. 682a) as amended, by qualified veterans of World War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. secs. 279–283) subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications by such veterans shall be subject to claims of the classes described in subdivision (2)

(b) *Twenty-day advance period for simultaneous preference-right filings.* For a period of 20 days from September 13, 1947, to October 3, 1947, inclusive, such veterans and persons claiming preference right superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m. on October 3, 1947, shall be treated as simultaneously filed.

(c) *Date for non-preference-right filings authorized by the public-land laws.* Commencing at 10:00 a. m. on January 3, 1948, any of the lands remaining unappropriated shall become subject to such application, petition, location, or selection by the public generally as may be authorized by the public-land laws.

(d) *Twenty-day advance period for simultaneous non-preference-right filings.* Applications by the general public may be presented during the 20-day period from December 15, 1947, to January 3, 1948, inclusive, and all such applications, together with those presented at 10:00 a. m. on January 3, 1948, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the District Land Office, Las Cruces, New Mexico, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations (Circular No. 324, May 22, 1914, 43 L. D. 254) and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations and applications under the desert land laws and the small tract act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the District Land Office, Las Cruces, New Mexico.

The lands affected by this order are described as follows:

NEW MEXICO PRINCIPAL MERIDIAN

T. 4 S., R. 21 E.,
Sec. 26;
T. 15 S., R. 22 E.,
Sec. 25;
T. 4 S., R. 23 E.,
Sec. 33;
T. 7 S., R. 24 E.,
Sec. 19, lots 7 and 12;
T. 16 S., R. 24 E.,
Sec. 26;
T. 6 S., R. 25 E.,
Sec. 9, SE¼,
Sec. 10, SW¼,
Sec. 15, NW¼,
T. 9 S., R. 27 E.,
Sec. 11;
T. 10 S., R. 30 E.,
Secs. 5 and 8;
T. 8 S., R. 31 E.,
Sec. 8, E½,
Sec. 9, W½,

containing 5,680.70 acres.

Portions of the lands are subject to the Executive Order of March 11, 1926 (Potash Reserve No. 6, New Mexico No. 1), withdrawing lands for classification and in aid of legislation.

The lands are, in general, arid and level to rolling in topography having a sandy to clay loam soil with gravel and rock.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior

AUGUST 1, 1947.

[F. R. Doc. 47-7507; Filed, Aug. 11, 1947; 8:55 a. m.]

[Public Land Order 388]

CALIFORNIA

REVOKING EXECUTIVE ORDER NO. 8865 OF AUGUST 21, 1941, WITHDRAWING PUBLIC LANDS FOR USE OF THE WAR DEPARTMENT FOR COMBAT FIRING RANGES AND MANEUVER PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Executive Order No. 8865 of August 21, 1941, as amended by Executive Order No. 9526 of February 28, 1945, withdrawing public lands for the use of the War Department for combat firing ranges and maneuver purposes, which was revoked in part by Public Land Order No. 287 of July 6, 1945, is hereby revoked as to the remaining lands.

The jurisdiction over and use of the lands granted to the War Department by Executive Order No. 8865 shall cease upon the date of the signing of this order. Thereupon, the jurisdiction over and administration of such lands shall be vested in the Department of the Interior and any other Department or agency of the Federal Government according to their respective interests then of record.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on October 3, 1947. At that time the lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-day period for preference-right filings.* For a period of 90 days from October 3, 1947, to January 2, 1948, inclusive, the public lands affected by this order shall be subject to (1) application under the homestead or the desert land laws, or the small tract act of June 1, 1938 (52 Stat. 609, 43 U. S. C. sec. 682a) as amended, by qualified veterans of World War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. secs. 279–283) subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications by such veterans shall be subject to claims of the classes described in subdivision (2)

(b) *Twenty-day advance period for simultaneous preference-right filings.* For a period of 20 days from September 13, 1947, to October 3, 1947, inclusive, such veterans and persons claiming preference rights superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m. on October 3, 1947, shall be treated as simultaneously filed.

(c) *Date for non-preference right filings authorized by the public-land laws.* Commencing at 10:00 a. m. on January 3, 1948, any of the lands remaining unappropriate shall become subject to such application, petition, location, or selection by the public generally as may be authorized by the public-land laws.

(d) *Twenty-day advance period for simultaneous non-preference right filings.* Applications by the general public may be presented during the 20-day period from December 15, 1947, to January 3, 1948, inclusive, and all such applications, together with those presented at 10:00 a. m. on January 3, 1948, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the District Land Office, Los Angeles, California, shall be acted upon in accordance with the regulations

contained in § 295.8 of Title 43 of the Code of Federal Regulations (Circular No. 324, May 22, 1914, 43 L. D. 254) and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations and applications under the desert land laws and the small tract act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the District Land Office, Los Angeles, California.

The lands affected by this order are described as follows:

The public lands in the following-described areas:

SAN BERNARDINO MERIDIAN

T. 16 S., R. 10 E.,
Secs. 25 and 26.
T. 16½ S., R. 10 E.,
Secs. 1 and 2.
T. 16 S., R. 11 E.,
Sec. 27, W½,
Secs. 28 to 34, inclusive;
Sec. 35, W½.
T. 16½ S., R. 11 E.,
Secs. 1 to 6, inclusive.
T. 17 S., R. 11 E.,
Secs. 1 to 6, inclusive.
T. 14, S., R. 12 E.,
Secs. 15, 17, 22, 27, 32, 33, and 34.
T. 15 S., R. 12 E.,
Secs. 3, 4, and 5.

The areas described, including both public and nonpublic lands, aggregate 22,694.99 acres.

The lands in T. 16 S., R. 10 E., Tps. 16½ and 17 S., R. 11 E., and Tps. 14 and 15 S., R. 12 E., are subject to the orders of the Secretary of the Interior of October 12 and 19, 1920, withdrawing certain lands for reclamation purposes.

The remaining public lands are desert in character, ranging from level to broken and rolling in topography, and having soil of sand and gravel.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior

AUGUST 1, 1947.

[F. R. Doc. 47-7503; Filed, Aug. 11, 1947; 8:55 a. m.]

[Public Land Order 389]

NEW MEXICO

REVOKING PUBLIC LAND ORDER NO. 21 OF AUGUST 6, 1942, WITHDRAWING PUBLIC LANDS FOR USE OF THE WAR DEPARTMENT AS A PRACTICE BOMBING RANGE

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Public Land Order No. 21 of August 6, 1942, as amended by Executive Order No. 9526 of February 28, 1945, withdrawing the hereinafter-described public lands for the use of the War Department as a practice bombing range is hereby revoked.

The jurisdiction over and use of such lands granted to the War Department by Public Land Order No. 21 shall cease upon the date of the signing of this order. Thereupon, the jurisdiction over and administration of such lands shall be vested in the Department of the Interior and any other Department or agency of the Federal Government according to their respective interests then of record.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on October 3, 1947. At that time the lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-day period for preference-right filings.* For a period of 90 days from October 3, 1947, to January 2, 1948, inclusive, the public lands affected by this order shall be subject to (1) application under the homestead or the desert land laws, or the small tract act of June 1, 1938 (52 Stat. 609, 43 U. S. C. sec. 682a) as amended, by qualified veterans of World War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. secs. 279-283) subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications by such veterans shall be subject to claims of the classes described in subdivision (2)

(b) *Twenty-day advance period for simultaneous preference-right filings.* For a period of 20 days from September 13, 1947, to October 3, 1947, inclusive, such veterans and persons claiming preference rights superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m. on October 3, 1947, shall be treated as simultaneously filed.

(c) *Date for nonpreference right filings authorized by the public-land laws.* Commencing at 10:00 a. m. on January 3, 1948, any of the lands remaining unappropriated shall become subject to such application, petition, location, or selection by the public generally as may be authorized by the public-land laws.

(d) *Twenty-day advance period for simultaneous non-preference right filings.* Applications by the general public may be presented during the 20-day period from December 15, 1947, to January 3, 1948, inclusive, and all such applications, together with those presented at 10:00 a. m. on January 3, 1948, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the District Land Office, Las Cruces, New Mexico, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations (Circular No. 324, May 22, 1914, 43 L. D. 254), and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations and applications under the desert land laws and the small tract act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the District Land Office, Las Cruces, New Mexico.

The lands affected by this order are described as follows:

NEW MEXICO PRINCIPAL MERIDIAN

T. 18 S., R. 23 E.,
Sec. 27, S½,
Sec. 34, N½.

The area described aggregates 640 acres.

Available information indicates that the above-described lands are traversed by several large draws and have a rolling to rough surface.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior.

AUGUST 1, 1947.

[F. R. Doc. 47-7509; Filed, Aug. 11, 1947; 8:55 a. m.]

[Public Land Order 390]

ALASKA

WITHDRAWING PUBLIC LAND FOR USE OF ALASKA ROAD COMMISSION AS ADMINISTRATIVE SITE

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Subject to valid existing rights, the following-described public land in Alaska is hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, but not the mineral-leasing laws, and reserved for the use of the Alaska Road Commission as an administrative site:

SEWARD MERIDIAN

T. 5 N., R. 10 W.,
Sec. 32, lot 2.

The area described contains 15.62 acres.

Executive Order No. 8979 of December 16, 1941, establishing the Kenai National Moose Range, is hereby revoked so far as it affects the above-described land.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior.

AUGUST 4, 1947.

[F. R. Doc. 47-7510; Filed, Aug. 11, 1947; 8:55 a. m.]

[Public Land Order 391]

NEVADA

REVOKING PUBLIC LAND ORDER NO. 266, OF MARCH 10, 1945, WITHDRAWING PUBLIC LANDS FOR USE OF THE NAVY DEPARTMENT AS TARGET RANGE

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Public Land Order No. 266 of March 16, 1945, withdrawing the hereinafter-described public lands for the use of the Navy Department as a target range, is hereby revoked.

The jurisdiction over and use of such lands granted to the Navy Department by Public Land Order No. 266 shall cease upon the date of the signing of this order. Thereupon, the jurisdiction over and administration of such lands shall be vested in the Department of the Interior and any other Department or agency of the Federal Government according to their respective interests then of record.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on October 6, 1947. At that time the lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-day period for preference-right filings.* For a period of 90 days from October 6, 1947, to January 5, 1948, inclusive, the public lands affected by this order shall be subject to (1) application under the homestead or the desert land laws, or the small tract act of June 1, 1938 (52 Stat. 609, 43 U. S. C. sec. 682a) as amended, by qualified veterans of World War II, for whose service recognition is granted by the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. secs. 279–283) subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications by such veterans shall be subject to claims of the classes described in subdivision (2)

(b) *Twenty-day advance period for simultaneous preference-right filings.* For a period of 20 days from September 17, 1947, to October 6, 1947, inclusive, such veterans and persons claiming preference rights superior to those of such veterans, may present their applications, and all such applications, together with those presented at 10:00 a. m. on October 6, 1947, shall be treated as simultaneously filed.

(c) *Date for non-preference-right filings authorized by the public-land laws.* Commencing at 10:00 a. m. on January 6, 1948, any of the lands remaining unappropriated shall become subject to such application, petition, location, or selection by the public generally as may be authorized by the public-land laws.

(d) *Twenty-day advance period for simultaneous non-preference-right filings.* Applications by the general public may be presented during the 20-day period from December 18, 1947, to January 6, 1948, inclusive, and all such applications, together with those presented at 10:00 a. m. on January 6, 1948, shall be treated as simultaneously filed.

Veterans shall accompany their applications with certified copies of their certificates of discharge, or other satisfactory evidence of their military or naval service. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated affidavits in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the District Land Office, Carson City, Nevada, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations (Circular No. 324, May 22, 1914, 43 L. D. 254) and Part 296 of that title, to the extent that such regulation are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations and applications under the desert land laws and the small tract act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the District Land Office, Carson City, Nevada.

The lands affected by this order are described as follows:

MOUNT DIABLO MERIDIAN

T. 16 N., R. 33 E.,
Sec 2, SW¼ and W½SE¼,
Sec. 3, S½,
Sec. 4, S½SW¼ and SE¼,
Sec. 5, E½SW¼SE¼ and SE¼SE¼,
Sec. 8, NE¼, SE¼NW¼, E½SW¼, and SE¼,
Secs. 9 and 10;
Sec. 11, W½NW¼NE¼, S½NE¼, W½, and SE¼,
Sec. 14, NW¼NE¼, NW¼, and W½SW¼;
Secs. 15, 16, and 17;
Sec. 20, N½N½,
Sec. 21, N½N½,
Sec. 22, N½N½,
Sec. 23, NW¼NW¼.

The areas described aggregate 5,880 acres.

The lands are fairly level desert lands located in Fairview Valley, Churchill County, Nevada.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior

AUGUST 4, 1947.

[F. R. Doc. 47-7512; Filed, Aug. 11, 1947; 8:55 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

[No. 29670]

PART 95—CAR SERVICE

INCREASED PER DIEM CHARGE ON FREIGHT CARS

Upon investigation, found that effective October 1, 1947, and for a period of six months thereafter, a per diem charge of $2.00 to be paid to the owner for the use of each car (except tank and refrigerator cars) will promote greater efficiency in the use and increase the supply of cars, and that such increased charge will be reasonable.

Report of the Commission. This proceeding, instituted by an order dated December 18, 1946, is an investigation, upon our own motion, to determine whether the establishment of a rate of $2 per day, or other increased rate, to be paid to the owner for the use of each car, during periods of car shortages (except tank and refrigerator cars) by any common carrier would promote greater efficiency in the use and increase the supply of cars; with the view of making findings and the entry of an order or orders, under the authority of the Interstate Commerce Act, particularly paragraph (10) (11) (13) and (14) of section 1 thereof, requiring the establishment of an increased basis and rate of compensation for car-hire during periods of car shortages if it be found that it will promote greater efficiency in the use and increase the supply of cars. All common carriers by railroad subject to the act and all other persons owning or leasing freight cars (except tank and refrigerator cars) to any such carrier were made respondents, and a copy of the order of investigation was served upon the Association of American Railroads, Car Service Division, hereinafter referred to as the Association, as well as upon the carriers. A proposed report was issued and exceptions were orally argued. Our findings differ from those proposed by the examiner.

Evidence was presented by the Director of our Bureau of Service and six service agents; by the Deputy Director of the Office of Defense Transportation; by the Chairman and Vice Chairman of the Car Service Division, in behalf of the Association and rail carrier members of the Association, and by 4 employees of the Association; by the Vice Presidents in charge of Operation, The Pennsylvania Railroad Company, hereinafter called the Pennsylvania, and Union Pacific Railroad Company; by the General Merchandise Manager, The New York, New Haven and Hartford Railroad Company, hereinafter called the New Haven; by the General Superintendent of Transportation, Seaboard Air Line Railway Company; by the President of the American Short Line Railroad Association; and by the Chief of the Transportation Facilities Division, Marketing Facilities Branch, Production and Marketing Administration, United States Department of Agriculture.

Counsel for the Association moved to dismiss the proceeding for lack of jurisdiction upon the ground that the Interstate Commerce Act does not authorize the Commission to prescribe a per diem charge which contains any element of penalty. Section 1 (14) (a) of the Interstate Commerce Act reads as follows:

> The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this part, including the compensation to be paid and other terms of any contract, agreement, or arrangement for the use of any locomotive, car, or other vehicle not owned by the carrier using it (and whether or not owned by another carrier), and the penalties or other sanctions for nonobservance of such rules, regulations, or practices.

The Association emphasizes the word "compensation" and argues that the Commission's authority is limited to the terms of compensation for the use of cars and does not embrace a per diem charge which has any element of penality. The compensation to be paid is merely incidental to and a part of the reasonble

rules, regulations, and practices with respect to car service which the Commission is authorized to prescribe, and the statute expressly provides for penalties and sanctions for nonobservance of these rules. Furthermore in determing reasonable "compensation" we may consider loss of profits, as well as the cost of ownership.

In Chicago, R. I. & P. Ry. Co. v. United States, 284 U. S. 80, the Supreme Court sustained our order in rules for car-hire settlement, 160 I. C. C. 339, 165 I. C. C. 495, except as to paragraph 5 of the order. Justice Stone in a dissenting opinion (concurred in by Justices Holmes and Brandeis) made the following statement: (pages 108–9)

> The very language of the Esch Car Service Act, authorizing the Commission to establish "rules, regulations and practices with respect to car service * * * including the compensation to be paid," treats car-hire as one form of regulation of the service. It is but a recognition of the historic fact that the car-hire charge may serve to penalize the unnecessary detention of cars and thus to regulate car movement, one of the considerations which led to the substitution of the per diem charge for the mileage system of car-hire payments. In this respect it is analogous to demurrage, in which the penalty element of the money payment imposed is emphasized over the element of compensation. It is for this reason, among others, that the Commission has generally refused to consider car-hire costs in fixing divisions, and in this case the Commission found that divisions had not customarily been adjusted with relation to such costs.
>
> That the per diem charge in its aspect as a penalty was an important element in the determination of the Commission, appears from its opinion and order. As the two days' free time allowance applies only to those cars which the short line receives from and returned to the line carrier, it is in practical effect limited to those cars with respect to which the short line renders terminal and originating services. Under the national demurrage rules, the terminal lines are compelled to allow to shippers two days' free time for loading and unloading before demurrage attaches. There is nothing in the Fifth Amendment to preclude the Commission, in apportioning car-hire costs, from giving consideration to the operation of the per diem charge as a penalty for the detention of cars and from making some allowance for the fact that the terminal carrier is in turn required to allow to shippers time free of demurrage charges.

We believe the statute contemplates that a per diem charge for the use of freight cars may be used a, an instrument of regulation to control the prompt movement and return of cars. Furthermore in times of car shortage reasonable compensation for the use of a car may be greater than in periods of car surplusage. The motion to dismiss is overruled.

Responsive to a circular issued by the Director of our Bureau of Service, dated April 14, 1947, investigations with respect to car delays were made by our service agents at numerous representative points throughout the country up to approximately May 12, 1947. As the result of those investigations, 259 reports were prepared and forwarded to the Bureau of Service. Data compiled from those reports were utilized in the preparation of an exhibit which was received in evidence. The exhibit indicates that cars have been delayed by the carriers for various reasons for periods ranging from 1 to 224 car-days. Representatives of the Association examined about 80 percent of the report and criticised 54 of those examined. Their testimony showed circumstances indicating that some of the delays reported were unavoidable. However, many of the delays reported could not be explained. The 54 reports criticised constitute only about 20.8 percent of the 259 reports comprising the exhibit. The exhibit does not purport to cover all the cars that were in terminals at the time checks were made. Our service agents investigate car delays in the ordinary course of their duties. The delays indicated in these special reports are similar in character to those found by our service agents to exist during 1946 and 1947.

Examples of delays shown by the exhibit are as follows: At Boston, Mass., 81 cars were delayed by the New Haven in placing, 14 awaiting movement, 35 in interchange, 30 held loaded with company material, and 35 held for light repairs, the delays ranging from 1 to 19 days. At Weehawken, N. J., 137 cars were delayed by The New York Central Railroad Company from 2 to 33 days awaiting movement. That carrier also held for placing at Buffalo, N. Y., 179 cars from 3 to 12 days. At Chicago, Ill., the Pennsylvania delayed 193 cars in placing, 22 cars in pulling, 32 other delays, and 2 cars for prospective loading. The delays ranged from 3 to 16 days. The Norfolk & Western Railway Company held 28 cars for prospective loading at Hopewell, Va., from 3 to 12 days. At Birmingham, Ala., the Atlantic Coast Line Railroad Company delayed 27 cars in placement, 23 cars in pulling, 70 cars in interchange, and 31 cars were held loaded with company material. These delays ranged from 1 to 9 days. At Orland Park, Ill., 9 cars loaded with company material were held by the Wabash Railway Company from 7 to 17 days. At Decatur, Ill., the Wabash delayed from 2 to 15 days 48 cars in placement, 6 cars in pulling, 7 cars awaiting weighing, and 27 cars loaded with company material. At Fort Worth, Tex., the Texas and New Orleans Railroad Company delayed the interchange of 22 cars from 1 to 9 days. At Spokane, Wash., the Northern Pacific Railway Company held 20 cars for prospective loading and 5 cars loaded with company material from 2 to 10 days. At St. Paul, Minn., The Minnesota Transfer Railway Company delayed from 3 to 7 days 22 cars in placement and 20 cars for prospective loading. At Reith, Oreg., the Union Pacific held 24 cars loaded with company material from 6 to 27 days. At Midland, Calif., The Atchison, Topeka and Santa Fe Railway Company, hereinafter called The Santa Fe, held 68 cars for prospective loading from 3 to 7 days. At Denver, Colo., that carrier held from 1 to 8 days 25 cars for placement, 28 cars for pulling, 22 cars awaiting movement 10 cars for interchange, and 3 cars for prospective loading. At Los Angeles, Calif., the Southern Pacific Company delayed from 2 to 12 days 282 cars for placement and 166 cars for pulling.

Investigation was made in the Detroit, Mich., area with respect to the waiving of per diem on cars used for the transportation of automobiles and automobile parts which disclosed that for the period from July 1 to December 31, 1946, the Pere Marquette Railway Company held per diem free, under the provisions of Car Service Division Circular 163–B, 2,807 cars for a total of 35,567 car-days. During January and February 1947, that carrier held for the same reason 3,626 cars for a total of 45,544 days.

In the Detroit area, representative loading of automobile cars and the number of cars on hand held per diem free during the first 15 days of April 1947 are as follows: April 1, 417 cars were loaded and 1,411 cars were on hand; April 2, 456 cars were loaded and 1,460 cars were on hand; and April 3, 359 cars were loaded and 1,537 were on hand. Automobile cars designated XAP are not suitable for other kinds of freight without dismantling certain interior facilities which are used in the loading of automobiles and parts. Automobile cars designated XAR may be used for the movement of other commodities, such as barrels, cotton, or merchandise, but the loading of grain is not recommended owing to damage to the car caused by nailing grain doors.

From January 30, 1942, to May 19, 1947, we issued 673 service orders of which 354 required the railroads to unload cars. Each order covered from 1 to 182 cars, some of which were requested by the carriers themselves, covering delays ranging from 20 days to 3 months. Under section 4 of the uniform bill of lading, carriers have the right to unload cars after the expiration of free time and the costs are chargeable to the owners of the shipments. If the carriers had exercised their right to unload these cars such cars would have been released sooner and would have been available for loading. Increased demurrage charges have reduced car detention by shippers, as indicated later.

The Association criticizes the showing made as to car delays. It points out that the service agents simply recorded the fact that a given car had remained stationary for a given period of time without undertaking to ascertain the cause of the delay, that is, whether avoidable or unavoidable. The Association further claims that the exhibit, above referred to, which purports to summarize the agents' underlying reports is unreliable in that it fails to disclose relevant facts shown in the reports which reports were not introduced in evidence. In support of this statement numerous examples are given which are the result of a review made by its representatives of about 80 percent of the underlying reports. The following examples of the several given will serve to illustrate the point: The exhibit shows 35 cars held for placement over 48 hours at Lawrence, Mass. The agent's report shows that 1,382 cars were checked in discovering the 35 delayed cars and that 17 of these were Saturday arrivals placed on the following Monday. The exhibit shows that the Missouri Pacific held 80 cars for interchange at Memphis from 1

to 9 days. The agent's report shows that 70 of the 80 cars were delivered in less than 24 hours. The exhibit shows that the Northern Pacific held for placement 29 cars at Fargo, N. Dak., from 2 to 7 days. The agent reported that these cars were held for an average of 2.8 days and explained that heavy snows contributed to the delay.

The Director of the Bureau of Service, the several service agents, and the Deputy Director of the Office of Defense Transportation all testified that in their opinion an increased per diem charge would furnish an incentive to move cars more promptly, increase efficiency in the use of, and increase the supply of cars. The Director of the Bureau of Service suggests the imposition of a charge of $5.50 per car per day, in lieu of the charge of $1.15 (increased to $1.25 effective June 1, 1947) applied in the same manner as the present charge. The service agents are agreed that the present charge is inadequate as an incentive to prompt movement of cars and that a substantial increase therein should be made. One agent suggests a charge of not less than $2, while another suggests the addition of from $1.50 to $2 to the present charge. The Deputy Director of the Office of Defense Transportation would be willing to try $2, but suggests the imposition of a charge sufficiently high to create an incentive to move the cars. The Department of Agriculture suggests a per diem charge of $2.

An agreement known as the "Car Service and Per Diem Agreement" provides car service rules, which are the subject of an investigation in Docket No. 29669, Car service—freight cars, and also provides a Code of Per Diem rules, which relates to the compensation to be paid for the use of cars not owned by the carrier using them. In rules for car-hire settlement, *supra,* we reviewed the history of car-hire agreements and per diem payments for the use of freight cars, and found, among other things, that the per diem charge of $1, which was in effect from November 1, 1920, to January 31, 1945, was just and reasonable. On February 1, 1945, the per diem charge was increased to $1.15 and on June 1, 1947, to $1.25.

There is pending a complaint, as amended, by certain short lines alleging that the per diem rates of $1.15 and $1.25 for the use of freight cars were and are unjust and unreasonable to the extent that they exceeded or exceed 95 cents per car per day, Docket No. 29587, Alabama, Tennessee & Northern Ry. Co., et al. v. Aberdeen & Rockfish R. Co. et al. There is also pending a complaint filed May 22, 1947, as amended, Docket No. 29751, The Atchison, Topeka and Santa Fe Ry. Co. et al. v. Aberdeen and Rockfish R. Co., et al., by The Denver and Rio Grande Western Railroad Company, Great Northern Railway Company Northern Pacific, Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington, Illinois Central Railroad Company, and the Santa Fe, alleging that:

> Defendants' failue to provide their respective railroads with the reasonably adequate supply of freight car facilities required by section 1 (4 and 10–12) of the Transportation Act necessarily has resulted and will continue to result in defendants' appropriation of an essential part of complainants' freight car supply. Such appropriation of complainants' freight cars not only results in shifting defendants' legal burden of car ownership costs to complainants, but it also results in the appropriation of freight cars which form an integral, necessary and essential part of complainants' respective railroad systems, whereby complainants sustain serious damage to the remainder of their respective railroads, during periods of car shortage, in an amount equal to the freight earnings that are lost to them as a direct and proximate result of the appropriation. By reason of these facts and of other facts directly affecting (a) the cost to complainants of ownership of rail plant and property and (b) the value of the use of railroad freight equipment, the present per diem rental of $1.15 is, and for many years prior to the filing of this complaint has been, unjust, unreasonable, inadequate and noncompensatory.
>
> A fully compensatory per diem charge giving proper weight to all of the costs and disabilities of freight car ownership would serve as an incentive to every railroad to provide itself with an ample supply of freight cars and thus tend to assure the provision and maintenance of a car supply fully adequate to national needs at all times and to the avoidance of national car shortages and their attendant evils.

Complainants ask: "that the Commission, by order, prescribe the just, reasonable, and compensatory per diem rental necessary to make complainants and all other railroads owning freight cars in the United States, pecuniarily whole for the appropriation and use of their freight cars in periods of car shortage as well as in periods of car surplusage; and that such other orders be made as the Commission may consider proper in the premises."

The question at issue in the present investigation is whether the establishment of a rate of $2 per car per day, or other increased rate, to be paid to the owner for the use of each freight car, during periods of car shortage (except tank and refrigerator) by any common carrier would promote greater efficiency in the use and increase the supply of cars.

The Association and the individual railroads for which an appearance was made take the position that a sound basis for per diem charges for the use of freight cars should be the cost of ownership, including a return on investment, and that the use of per diem rules for the imposition of a penalty would be unlawful and would necessarily result in great inequity and injustice. Instead of promoting efficiency in the use and supply of cars, respondents contend that the imposition of a penalty per diem charge would actually result in inefficiency in the use of cars and decrease the supply of cars. However, the complaint of the 6 western railroads, Docket No. 29751, shows that these railroads regard the present charge as being less than reasonable.

The Chesapeake and Ohio Railway Company takes the position that the present charge is grossly inadequate, and that it should be increased to a figure that will cover the full cost of ownership and maintenance of freight cars, thereby speeding up their movement and create an incentive for the railroads to purchase more cars. However, it suggests no definite figure, but requests that no increased per diem charge be prescribed in this proceeding.

The present car shortage is the result of post-war demands upon an inadequate and war-depleted car supply. At the time of the hearing in this investigation, May 1947, the shortage, insofar as it applied to box cars, was somewhat less than it had been in the previous months of 1947, but this condition was recognized to be temporary and the shortage of box cars was expected to again become acute as soon as the 1947 grain crop began to move.

An important factor affecting the present car supply was the extensive and continuing car surplus dating from 1930. The daily minimum surplus reported by railroads totaled 545,000 cars during one week in 1932, and the minimum surplus remained about 100,000 cars throughout the period until 1936. The maximum surplus reported by the railroads was 772,000 cars as of June 30, 1932. The railroads reported a minimum surplus of 72,000 cars in 1940. During this period, car ownership was allowed to decrease to a point where it would be more in accord with maximum requirements. Shortages did not begin to develop until the war period, at which time the railroads could not obtain the cars they wanted to purchase because necessary materials were being diverted to other purposes. There are now on order, or committed, a volume which totals in excess of 130,000 cars, which volume is estimated as sufficient to keep the car builders and railroad car shops busy until July 1, 1948. The total freight cars of all types owned by class I railroads and certain minor railroads on May 1, 1947, was 1,744,239, and the total box cars, 726,364.

Respondents introduced evidence tending to show that the available car supply is, upon the whole, economically and efficiently utilized. Over-all efficiency is indicated by the following facts: The turn-around time for box cars, that is, the time between each load given a box car, has decreased consistently month by month throughout 1946, and up to March 1947. The turn-around time for all cars by months from January 1945 through March 1947 is as follows:

	1945	1946	1947
	Days	*Days*	*Days*
January	16.0	16.3	14.9
February	15.8	16.5	11.7
March	15.0	14.9	14.0
April	14.2	13.4	(1)
May	13.9	13.3	.....
June	13.7	14.7	.....
July	14.1	13.9	.....
August	14.7	13.2	.....
September	14.4	13.5	.....
October	15.1	13.9	.....
November	14.8	14.3	.....
December	16.7	15.8	.....

[1] Coal strike.

It will be noted that with few exceptions month by month there has been a decrease as compared with the corresponding month of the previous year. The latest record of turn-around time for the various types of cars is as follows:

	Box	Gondolas	Hoppers	Stock	Flat	All cars
	Days	*Days*	*Days*	*Days*	*Days*	*Days*
April 1947	12.56	15.28	15.56	22.98	17.85	14.60

Since January 1, 1947, the total box-car loadings exceeded those for a like period of 1946, by 72,000 cars. These increased car loadings are being accomplished with a decrease in the ownership of box cars of approximately 11,000 units, comparing May 1, 1947, with a corresponding day of 1946. Total loadings of all cars of revenue freight for the first 17 weeks in 1947 exceeded those of 1946 by 10.9 percent.

There has been a continuing cooperative effort between the shipping public and the railroads for the past several years in the matter of efficiency of car use. The results have been productive of increased efficiency. This can be measured in heavier loading; in more prompt loading and unloading; and the decrease in the number of cars held by industry beyond free time. In 1940 the average load for all carload freight was 37.7 tons per car. In 1942 the average load for all carload freight was increased to 40.1 tons per car, and in 1943 was increased to 41 tons per car. This increased average loading of freight cars was accomplished through voluntary cooperation of car efficiency committees of the 13 Shipper Advisory Boards, through orders of the Office of Defense Transportation, particularly General Order ODT-18, which took effect November 1, 1942, and through numerous service orders issued by this Commission.

As a result of service orders, a total of over 86,000 refrigerator cars, otherwise en route empty, were loaded with box car traffic to Pacific coast points during the 10-month period ended April 30, 1947.

The more prompt loading and unloading of cars is partially reflected in the faster movement of cars as shown in the records of miles per car per day. The average miles per car per day for all loads since 1939 are shown in the following table:

1939	1940	1941	1942	1943	1944	1945	1946
31.7	35.0	40.6	46.3	48.5	49.3	46.5	42.4

It will be noted that in 1939 the average mile per car per day was 31.7 and that this mileage increased steadily until 1944, when it was 49.3 miles per car per day. Since that time there has been a decrease in miles per car per day. The high averages of 1943 and 1944 and the first half of 1945 were in part due to the heavy movement of tank cars of petroleum products in special symbolled trains from the southwestern States to the Atlantic seaboard and to other long-haul movements occasioned by the war. The decrease in miles per car per day in 1946 is due in part to the effect of strikes, principally that of the coal miners during 1946, when thousands of coal cars were idle for a considerable period of time. So far in 1947 the miles per car per day are greater than those for the corresponding months of 1946.

The reduction in the number of cars held beyond the free time is reflected in the summary of reports by the car efficiency committees, of which there are 601 covering 856 cities and towns throughout the country. This record shows the percentage of cars received under load which were not released by industry within the 48-hour free time allowed under the demurrage rules. A summary of these reports is shown as follows:

1943	1944	1945	1946
Percent	*Percent*	*Percent*	*Percent*
22.2	16.70	16.13	17.78

The effect of the five-day week is reflected in the 1946 figure. The latest month for which complete data are available is April 1947, which shows 16.36 percent of cars not released by industry within the 48-hour free time period, indicating a favorable trend in the matter of car detention. Respondents admitted that service orders increasing penalties in the form of demurrage charges had had a beneficial effect in reducing car detention.

Another method of measuring efficiency in car use is by examining the record of net ton-miles per car per day which combines the items of tons per car and speed of movement. In the prewar years of 1939, 1940, and 1941, the net ton-miles per car per day was 610, 664, and 795, respectively. For the year 1946, it was 948, an increase of about 37.5 percent over the average of the three prewar years. The first two months of 1947 show a substantial improvement over the corresponding months of 1946.

Efficient use of freight cars calls for the least empty car mileage consistent with distribution requirements. Evidence of the more direct movement of empty cars from the point where released to the nearest loading territory is found in the trend of average percentage of empty car-miles to total car-miles. The reduction in recent years is shown is the following table:

AVERAGE PERCENTAGE OF EMPTY CAR-MILES TO TOTAL CAR-MILES

1942	1943	1944	1945	1946
Percent	*Percent*	*Percent*	*Percent*	*Percent*
37.2	35.8	34.3	33	33

One means of reducing empty car mileage is to forward cars to the territory where needed by the most direct route instead of returning them over the route of movement. For the year 1946, for example, it was found that there were approximately 50,000 more box cars interchanged under load by the western railroads in the Southeast through St. Louis, Memphis, Tenn., Shreveport, La., and New Orleans, La., than were forwarded west through those gateways. The southeastern railroads, in turn, forwarded about the same excess of loaded box cars northbound through Potomac River gateways over the south-bound movement through those gateways. These cars thus released in the East and North were forwarded direct to the western railroads through the Chicago and St. Louis gateways rather than to return them over the more circuitous route through the Southeast. This was done in compliance with relocation orders of our agent empowered by Service Order No. 534 to reroute and relocate empty box cars. Early in 1943, in order to avoid cross hauling of cars of the same class between northern and southern California, it was agreed between the railroads in that area that each line would move east-bound any surplus empty cars regardless of the route over which they had moved into California loaded. In instances where the empty car moves over a railroad which has not participated in the loaded movement of that car, there is no waiver of per diem. At Chicago and St. Louis a larger number of cars have been short routed to owners at a substantial saving in empty car mileage. The result is that a railroad often bears the expense of transporting an empty car and at the same time pays the per diem charge on such car without receiving any revenue from that particular car.

It is an established practice to accumulate and store a considerable number of box cars for the loading of wheat and other grain beginning in the Southwest and moving north as the season advances. Box cars were being so accumulated and stored at the time of the hearing.

Respondents deem it impracticable to devise and apply any system of per diem penalties which would distinguish between cases of delinquent handling of cars and cases where efficiency is attained. No practical code of rules was proposed by any party which would distinguish between instances of avoidable delay and instances of unavoidable delay in the handling of cars.

Respondents contend that the per diem rules and demurrage rules are in no sense analogous. Demurrage is not assessed against a shipper or receiver until a reasonable period of time has elapsed. A shipper is not charged demurrage on Sundays or holidays. There are various other exceptions in the demurrage rules under which demurrage may be avoided. On the other hand, per diem is paid by a railroad for each calendar day a foreign car is on its line, irrespective of the conditions which account for its presence there. These conditions vary according to a large number of factors which in turn vary not only as between railroads but as between individual shipments. The demurrage rules are so designed as to distinguish between reasonable and undue detention of cars. On the other hand, respondents contend that the per diem rules have never been designed to distinguish between efficient use of cars and undue detention or delays in car handling. We believe that the per diem rules and charges were and should be designed to furnish some incentive for the prompt movement and return of cars.

In times of car shortage the car service division of the Association endeavors to promote the direct movement of empty cars from point of release to the nearest loading territory. The car service rules as they apply to box cars, although not suspended, are not actually being observed and there is no penalty for their violation. In other words, foreign cars

are being appropriated for loading largely in disregard of the car service rules. This probably results in the least empty car mileage in relation to the loaded car miles. From the standpoint of efficiency in the use of cars, this policy cannot be questioned. However, it does not do entire justice to the railroads, and to the shippers located on the railroads, which own an adequate supply of cars as compared with other railroads which are not adequately supplied with cars, and are using the cars of foreign lines even for their local traffic, without regard to their expeditious return to the owner.

The average freight revenue per freight car day (serviceable) loaded and empty for all class I railroads was $9.33 in 1945 and $8.47 in 1946. Data are not available in the record to show these average freight revenues per freight car day for the various districts or regions. The average net railway operating income assignable to freight car service per car day is shown for the Great Northern, the Burlington, and the Santa Fe as follows:

Average freight revenue per freight car day (serviceable) loaded and empty

G. N.		C. B. & Q.		A. T. & S. F.	
1945	1946	1945	1946	1945	1946
$11.44	$8.98	$11.77	$9.55	$12.14	$10.90

Average net railway operating income assignable to freight service per freight car day (serviceable) loaded and empty

G. N.		C. B. & Q.		A. T. & S. F.	
1945	1946	1945	1946	1945	1946
$2.29	$2.12	$1.86	$1.80	[1] $0.69	$1.53

[1] This low average is due to amortization of defense projects in the last month of 1945.

The above figures indicate that the average gross freight revenue per freight car day (serviceable) is considerably in excess of $2.00 per day. The average net railway operating income assignable to freight service per freight car day (serviceable) loaded and empty exceeded $2.00 on the Great Northern in 1945 and 1946. In holding cars of another railroad for prospective loading it may be assumed that a particular railroad or its operating officials would consider the prospective earnings of a loaded car as compared with a prospective loss of earnings if a car was not available when a load was offered.

The American Short Line Railroad Association is a voluntary non-profit organization of 312 common carriers by rail, subject to the act. It is not a member of the Association of American Railroads. The members operate approximately 16,000 miles of main track, own about 35,000 cars, employ 52,000 persons, and in 1945 their gross operating revenue was in excess of $287,000,000. The 312 members are unanimously opposed to the establishment of $2 per day, or any other per diem rate, any portion of which would consist of a penalty. The short lines state that they are making every effort to avoid car delays, and not overlooking any opportunity to render the best possible service to their shippers, and that they would be seriously burdened by any increase in the per diem rate. They state that they are already burdened with costs, including per diem, to the point where their ability to continue operation may be impaired. They state that many provisions of the standard labor contracts now in effect on substantially all railroads are inflexible and prohibit any appreciable consideration being given to, delayed cars. In their opinion, the pick-up and drop rule which limits the number of stops a train may make between termini; the penalties for one road crew running around another between termini; and the provision that assignment of extra work, or work of a different class, results in the beginning of a new day, are so costly that railroad officials would pay little attention to a penalty per diem rate in determining whether or not certain cars were to be moved. The avoidance of the penalty, even on several cars, would not equal the additional pay-roll cost. It is the view of the short lines that a penalty per diem charge would not result in a net saving of car-days. They urge that the concentration of cars for heavy seasonal movements would be impaired because of prohibitory costs if penalty per diem should be imposed. It should be pointed out that there are about 175 so-called apportionment agreements between short lines and their connections, which provide for quarter days of free time up to a maximum of two days, which is a reclaim period for the short lines. When a short line acts as a terminal switching line it is entitled to a switching reclaim. Any increase in the per diem rate would be borne by the short lines to the extent that they now pay per diem. Data showing the amounts actually paid by the short lines in per diem charges are not available in the record.

Some railroads own few cars in relation to the cars which they use and thus the amount which they pay in the form of per diem charges greatly exceeds the amount which they receive. On the other hand, some railroads own a great many more cars in relation to the cars which they use and, therefore, the amount which they receive in the form of per diem charges greatly exceeds the amount which they pay. Appendix A shows the class I railroads and the net amounts which they paid in per diem charges and the net amounts which they received in the form of per diem charges during the year 1946. An exhibit showing the debit per diem railroads and the net amounts of per diem which they paid in 1946, together with their net income, indicates that if the per diem charge had been $5.50 that each of these railroads, with very few exceptions, would have had a deficit in net income. The same exhibit shows the credit per diem railroads and the amounts which they would have received under a $5.50 per diem, which in many cases would have more than doubled their net income.

The witness for the Pennsylvania Railroad Company, speaking for the major railroads in eastern and Allegheny districts (not including the New England railroads) placed in the record a statement of the car ownership formula adopted by these eastern railroads. It is that each railroad should own sufficient freight equipment by proper classes to protect the anticipated peak load that will originate on its line, with due regard to the short line roads and the terminal line roads who are dependent upon them for car supply, and taking into consideration foreign cars released on its line that can be reloaded in accordance with the car service rules. The New Haven owns 3,682 box cars. For the year 1946 the average number of box-car loads which it both originated and terminated was 16,768 per month. Based on experience, a box car, in strictly local service on the New Haven was loaded six times per month, and to supply cars for this average loading approximately 2,795 cars were required. This left only 887 cars remaining of the total box-car ownership for off-line loading. Consideration of the supply of box cars for off-line loading requires a different approach. The New Haven receives far more loaded cars from its connections than it loads to its connections. For example, in 1946 an average of 41,496 loaded box cars per month were received from connections, and an average of 19,712 box cars per month were loaded for off-line movement and interchanged with connecting lines. The ratio of loaded box cars for off-line delivery was 47.5 percent of the loaded box cars received from connections. This leaves a considerable number of foreign-owned box cars on the New Haven which must be returned empty or moved to a loading area.

In 1921 the New Haven owned 35,745 freight cars of all types. On December 31, 1946, the total freight cars owned was 6,508. This reduction in the number of cars owned was planned by the New Haven. The New Haven has on order 1,500 additional box cars.

Semi-monthly car distribution reports are compiled by the car service division of the Association showing the cars owned, the cars on line, and percentage of cars on line to the cars owned. Appendix B shows the semi-monthly reports as of May 1, 1947, and January 1, 1941, for class I railroads. It will be observed that railroads in the eastern district on January 1, 1941, had on line 106.3 percent of their total ownership, and that on May 1, 1947, they had on line 110.1 percent of their total ownership.

The semi-monthly report of the car service division dated March 1, 1947, shows that there are 113 class I railroads with an ownership of 1,738,302 per diem freight cars. Twenty-eight of those lines, comprising slightly less than 25 percent of the group, had a combined ownership of 1,426,724 cars, about 82 percent of the group total. The remaining 85 railroads, representing about 75 percent of the group, owned only 18 percent of the total cars. In respect to percentage of cars on line to ownership the 85 railroads (owning 18 percent of the cars) reported an average percentage of 113.7 percent of cars on line to ownership. However, there were marked fluctuations as to individual lines.

There are some penalties provided in the present per diem rules. Rule 1 provides "that when per diem is not reported to the car owner within four (4) months and ten (10) days from the last day of the month in which it is earned, the rate shall be increased fifteen (15) cents per day for each six months' period or fraction thereof that report of such per diem is thereafter withheld; provided, that the aggregate increase in the rate shall not exceed 60 cents per car per day."

Rule 15, among other things, provides as follows: "A road failing to receive promptly from a connection empty cars at home on its road, moving home under Car Service Rules, shall be responsible to the connection for double the per diem on such cars held for delivery after the first day for which reclaim is made." Thus, a railroad must pay double per diem if it fails to accept its own cars at a point of interchange.

In 1902, when the per diem rules first came into operation, there was a provision for an 80-cent surcharge (later changed to 75 cents) which applied in case an owner demanded of another road that such other road should dispossess itself of a car belonging to the former which had been on the latter road for a period of 20 days. If the car was not sent off line within the next 10 days, the penalty applied. The regular per diem at that time was 20 cents (later changed to 25 cents) so that the total charge with the penalty added was $1 per day. This penalty was later eliminated from the rules.

Conclusions. We find that effective October 1, 1947, and for a period of six months thereafter, the present per diem charge for the use of freight cars, other than tank and refrigerator cars shall be increased to $2.00, and that such increased charge will promote greater efficiency in the use and increase the supply of cars (except tank and refrigerator cars) and that such increased charge will be reasonable.

An appropriate order will be entered.

Mahaffie, Commissioner, concurring:

I concur in the conclusion reached in the report but desire somewhat to amplify the grounds on which, as I view it, the order is justified. A car shortage presently exists. A more severe one is threatened. The failure of essential transportation is likely to be one of the most grievous of troubles to an individual shipper. To the country as a whole, especially if wide-spread and prolonged, it may mean disaster. In view of these facts, any scheme that promises even a small measure of relief should have sympathetic consideration. It is on this theory that I am willing to try increasing per diem on a temporary basis. Per diem charges offer, of course, no complete cure. They apply only to cars off-line, and car delays on home lines are perhaps as frequent as those occurring on foreign lines. An additional consideration is that increases in per diem are likely to augment the earnings of lines already opulent and to shrink those of lines facing financial trouble. It is possible that an increase in per diem may so speed up movement as to mitigate this latter difficulty. Unless this does result the experiment will fail. On the whole, I have reached the conclusion that the plan has enough promise of benefit to make it, under present circumstances, worth trying.

Miller, Commissioner, dissenting:

I disagree with the conclusion reached by the majority. The record affords no basis for an increase in the present per diem charge for general application. I am convinced that the two-dollar charge will not accomplish its intended purpose which is to promote greater efficiency in the use of cars during periods of car shortage. On the other hand, it is apparent that the general application of this charge will bring about undesirable results. A carrier which efficiently handles cars will be subjected to the payment the same as a carrier guilty of inefficient use of cars. It will deplete the revenues of those carriers referred to as debit per-diem lines, and increase the revenues of those referred to as credit per diem lines.

I believe that a substantial increase in the per diem charge designed to apply to specific situations where cars are being unduly and unreasonably delayed would promote greater efficiency in the use of cars and increase their supply during periods of car shortage and that during such emergencies we have the authority to impose such increase by means of service orders. In my opinion, we should so find, and discontinue this proceeding without prejudice to the issuance of service orders as situations may demand.

Commissioner Barnard joins in this dissent.

Patterson, Commissioner, dissenting:

I do not agree with the findings of the majority. While they find that the per diem charge for the use of a freight car should be $2.00 for a period of six months beginning about three months hence, they make no finding that the present rate of $1.25 is not reasonable and sufficient compensation for the use of a car, although our power with respect to per diem charges is restricted solely to the fixing of such charges as compensation for the use of cars.

In prescribing an increase of 75 cents the majority apparently rely upon the provisions of Section 1 (14) That provision authorizes us to prescribe penalties or sanctions for non-observance of such rules, regulations or practices as we may establish with respect to car service. We have not established any such rules, regulations or practices. Manifestly we must before we can prescribe penalties or sanctions for their non-observance. When we do fix such penalties or sanctions in the form of money payments they should be paid into the United States Treasury and not into the treasuries of the railroads.

The penalty charge which the majority here imposes is as unjust as it is unlawful. It will apply for each day each railroad is in possession of a foreign-line car, irrespective of whether the car is efficiently or inefficiently handled, whether it is expedited or delayed, or delayed, or whether the delay is avoidable or unavoidable.

The majority also find that the increased per diem rate of $2.00 will promote greater efficiency in the use and increase the supply of cars. Just how these results will be accomplished they do not say. Neither their report nor the record affords any support for such a finding. Past railroad experience indicates just the contrary.

Mitchell, Commissioner, dissenting:

I cannot go with the findings of the majority because I am convinced that the Commission is without authority to require any increase in per diem charges, as does this report, solely as a penalty, and also because in my opinion the specific amount fixed is without support in the record. As I read the various provisions of the Act dealing with our powers in this respect, the authority conferred upon this Commission having to do with per diem is restricted to the fixation of charges therefor as compensation, not as a penalty. And such authority can be exercised only after hearing and on a record embodying some evidence upon the level of the charges. I can find no such evidence upon this record.

APPENDIX A

CLASS I RAILROADS—YEAR 1946

Debit Per Diem Roads

[Net per diem payable]

	Actual
New England region:	
Boston & Maine	$2,411,363
Canadian National Lines in New England	342,253
Canadian Pacific (lines in Maine)	194,923
Canadian Pacific (lines in Vermont)	217,111
Central Vermont	200,742
New York, New Haven & Hartford	4,806,186
Rutland	50,633
Great Lakes region:	
Ann Arbor	65,079
Detroit & Mackinac	109,216
Detroit & Toledo Shore Line	547,772
Erie (including Chicago & Erie)	2,638,452
Grand Trunk Western	431,614
Lehigh & Hudson River	106,766
Lehigh Valley	439,673
Monongahela	976,301
New York Central	7,301,222
New York, Chicago & St. Louis	818,174
New York, Ontario & Western	778,931
New York, Susquehanna & Western	597,493
Pere Marquette	84,040
Pittsburg & Shawmut	64,003
Wabash	220,630
Central Eastern region:	
Akron, Canton & Youngstown	169,782
Central Railroad of New Jersey	1,695,185
Chicago & Eastern Illinois	467,925
Detroit, Toledo & Ironton	319,113
Illinois Terminal Co	250,161
Long Island	2,340,323
Missouri-Illinois	103,255
Penna-Reading Seashore Lines	860,789
Staten Island Rapid Transit	250,178
Pocahontas region:	
Richmond, Fredericksburg & Potomac	458,933
Southern region:	
Atlanta & West Point	1,314
Atlantic Coast Lines	512,931
Charleston & Western Carolina	26,662
Florida East Coast	557,662
Georgia Railroad	61,246
Georgia & Florida	95,459
Georgia, Southern & Florida	143,481
Gulf, Mobile & Ohio	436,465
Mississippi Central	99,457
New Orleans & Northeastern	324,752
Norfolk Southern	379,993
Seaboard Air Line	1,380,613
Southern Railway Co	855,182
Western Railway of Alabama	1,631
Yazoo & Mississippi Valley	3,553

(Report ended June 30, 1946.)

APPENDIX A—Continued

CLASS I RAILROADS—YEAR 1946—CON.

Debit Per Diem Roads—Con.

	Actual
Northwestern region:	
Chicago & North Western	$1,009,668
Chicago Great Western	128,835
Chicago, St. Paul, Minneapolis & Omaha	641,434
Duluth, South Shore & Atlantic	54,690
Duluth, Winnipeg & Pacific	218,153
Minneapolis & St. Louis	74,664
Spokane International	83,064
Spokane, Portland & Seattle	692,787
Wisconsin Central	454,838
Central western region:	
Alton Railroad	785,869
Chicago, Rock Island & Pacific	918,975
Colorado & Wyoming	19,648
Denver & Salt Lake	144,883
Northwestern Pacific	206,162
Southern Pacific Company—Pacific Lines	3,590,468
Western Pacific	134,901
Southwestern region:	
Burlington-Rock Island	249,878
Gulf Coast Lines	458,406
International-Great Northern	595,374
Kansas City Southern	654,541
Kansas, Oklahoma & Gulf	116,425
Louisiana & Arkansas	413,392
Midland Valley	96,865
Missouri-Kansas-Texas Lines	421,432
Oklahoma City-Ada-Atoka	103,666
St. Louis, San Francisco & Texas	8,363
St. Louis Southwestern Lines	14,858
Texas & New Orleans	2,371,060
Texas Mexican	165,128

Credit Per Diem Roads

[Net per diem receivable]

	Actual
New England region:	
Bangor & Aroostook	$443,672
Maine Central	91,152
Great Lakes region:	
Cambria & Indiana	981,137
Delaware & Hudson	503,372
Delaware, Lackawanna & Western	3,185
Lehigh & New England	304,228
Montour	453,536
Pittsburgh & Lake Erie	6,426,052
Pittsburgh & West Virginia	395,402
Central Eastern region:	
Baltimore & Ohio	684,998
Bessemer & Lake Erie	2,892,010
Central Railroad of Pennsylvania	1,131,846
Chicago & Illinois Midland	37,352
Pennsylvania System	2,804,868
Reading Company	188,606
Western Maryland	832,597
Wheeling & Lake Erie	2,017,275
Pocahontas region:	
Chesapeake & Ohio	7,953,437
Norfolk & Western	10,404,208
Virginian	1,855,055
Southern region:	
Alabama Great Southern	528,874
Central of Georgia	902,544
Cincinnati, New Orleans & Texas Pacific	1,305,392
Clinchfield Railroad	789,968
Columbus & Greenville	4,217
Illinois Central	100,952
Louisville & Nashville	8,086,281
Nashville, Chattanooga & St. Louis	270,290
Northwestern region:	
Chicago, Milwaukee, St. Paul & Pacific	777,474
Duluth, Missabe & Iron Range	126,882
Great Northern	2,359,961
Lake Superior & Ishpeming	76,426
Minneapolis, St. Paul & Sault Ste. Marie	398,797
Northern Pacific	2,824,991
Central western region:	
Atchison, Topeka & Sante Fe Railway System	2,598,898
Chicago, Burlington & Quincy	1,701,151
Colorado & Southern	27,553

APPENDIX A—Continued

CLASS I RAILROADS—YEAR 1946—CON.

Credit Per Diem Roads—Continued

	Actual
Central western region—Con.	
Denver & Rio Grande Western	$1,358,784
Fort Worth & Denver City	514,443
Union Pacific Railroad	1,010,861
Utah Railway	136,506
Southwestern region:	
Missouri Pacific	59,172
St. Louis-San Francisco	2,971,596
Texas & Pacific	136,634

APPENDIX B

SEMI-MONTHLY REVENUE CAR LOCATION SUMMARY—CLASS I AND MINOR ROADS

MAY 1, 1947

Railroads	Total box cars		
	Ownership	On line	Percent
Eastern district			
Ann Arbor	743	860	115.7
B. & Aroos	2,336	1,424	61.0
B. & Maine	2,696	7,609	282.2
Central Vt.	1,085	1,257	115.9
C. I. & L.	576	1,240	215.3
D. & H.	2,472	3,320	134.3
D. L. & W.	7,272	7,962	109.5
Detroit & Mac.	223	188	84.3
D. & T. S. L.		315	
D. T. & I.	2,263	2,143	97.3
Erie	11,818	12,091	102.3
G. T. W.	8,522	8,156	95.7
L. & B. R.	2	90	(1)
L. & N. E.	933	400	42.9
Lehigh Val.	5,154	7,904	153.4
Maine Cent.	3,333	2,582	77.4
Monongahela		103	
Montour		6	
N. Y. C. System	64,616	67,400	104.3
N. Y. C. & St. L.	7,633	7,101	93.1
N. Y. N. H. & H.	3,682	13,660	371.0
N. Y. O. & W.	45	1,258	(1)
N. Y. S. & W.	48	844	(1)
P. M.	9,477	8,427	88.9
P. & L. E.	3,954	1,906	48.2
Pitts. & Shaw	8	29	362.5
Pitts. & W. Va.	100	215	215.6
P. S. & N. Abandoned			
Rutland	592	597	100.8
Wabash	11,937	9,641	80.4
W. & L. E.	3,168	1,570	49.6
Total, Class I	164,683	170,206	110.1
Minor Roads	447	3,222	720.8
Grand total	165,130	173,528	111.9
Allegheny district			
A. C. & Y.	465	325	69.9
B. & O.	31,820	27,985	87.9
B. & L. E.	990	216	21.8
Cambria & Ind.		2	
C. N. J.-C. R. Pa.	2,323	5,342	229.7
Long Island		2,854	
P-R Seashore		1,063	
Penna. Sys.	78,378	75,983	96.9
Reading Co.	7,504	11,810	157.4
S. I. R. T.		509	
Union (Pitts.)	14	387	(1)
Western Md.	2,019	2,058	101.9
Total, Class I	123,516	128,531	104.1
Minor Roads	39	1,692	(1)
Grand total	123,555	130,226	105.4
Pocahontas district			
C. & O.	13,651	8,545	62.6
N. & W.	9,366	5,225	55.8
Virginian	172	733	426.2
Total, Class I	23,189	14,503	62.5
Minor roads		802	
Grand total	23,189	15,305	66.0
Southern district			
A. & W. P.-W. of A.	613	816	133.1
A. C. L.	12,223	11,584	94.8
Cent. of Ga.	5,767	4,155	72.0
C. & W. C.	621	634	102.1
Clinchfield	831	903	109.3
Col. & Green.	230	173	69.7
F. E. C.	214	1,179	550.9
Georgia & Fla.	308	389	126.3
Georgia	739	734	99.3
G. M. & O.	3,383	4,221	124.8
Ill. Cent. Sys.	19,212	18,962	98.7
L. & N.	17,506	12,812	73.2
Miss. Cent.	28	154	550.0
N. O. & St. L.	8,799	3,087	81.3
Norfolk Sou.	770	837	108.7
R. F. & P.	471	768	163.1

APPENDIX B—Continued

Railroads	Total box cars		
	Ownership	On line	Percent
Southern district—Con.			
S. A. L.	11,410	10,167	89.0
Southern Sys.	28,004	26,020	94.1
Tenn. Cent.	197	441	223.9
Total, Class I	103,936	98,931	92.5
Minor roads	512	2,015	393.6
Grand total	107,493	100,946	93.9
Northwestern districts			
C. & N. W.-C. St. P. M. & O.	26,033	27,548	105.8
C. G. W.	3,411	3,009	88.2
C. M. St. P. & P.	20,662	27,283	89.3
D. M. & I. R.	333	434	123.4
D. S. S. & A.	285	250	87.7
D. W. & P.	21	575	(1)
E. J. & E.	950	2,103	230.8
C. B. & W.	318	436	137.1
G. N.	23,632	23,396	99.0
L. S. & I.	95	64	67.4
M. & St. L.	2,630	1,968	74.8
M. St. P. & S. S. M.	9,692	6,839	71.3
Nor. Pac.	19,742	17,738	89.8
Spokane Int.	25	90	360.0
S. P. & S.	785	1,845	235.0
Total, Class I	118,404	113,673	95.9
Minor roads	1,298	3,800	292.8
Grand total	119,702	117,473	98.1
Central Western District			
A. T. & S. F. Sys.	34,784	27,859	80.1
Alton	1,908	2,720	142.6
C. & E. I.	1,037	2,457	230.9
C. & I. M.	365	377	103.2
C. B. & Q.	21,033	18,015	85.3
Colo. & Sou.	541	807	149.2
Colo. & Wyo.	4	00	(1)
C. R. I. & P.	18,710	15,505	82.8
D. & R. G. W.	4,734	2,857	62.3
D. & S. L. Included in D. & R. G. W.).			
Ft. W. & D. C.	1,027	1,160	113.0
Ill. Term.	829	595	71.8
Missouri-Ill.	300	358	119.3
Nevada Nor.	6	35	583.3
N. W. Pac.	174	699	401.7
S. P. (Pacific)	25,357	24,009	93.0
T. P. & W.	20	93	357.7
U. P. System	20,108	22,512	89.2
Utah		30	
Western Pac.	1,871	2,721	145.4
Total Class I	139,268	123,865	88.9
Minor Roads	61	1,124	(1)
Grand total	139,329	124,989	89.7
Southwestern District			
B.-R. I.	10	823	(1)
G. C. Lines	2,401	2,666	111.0
I.-G. N.	2,544	3,768	147.7
K. G. S.	1,701	2,668	149.0
K. O. & G.-MV-OO A. A.	12	360	(1)
La. & Ark.	1,181	1,541	130.5
Mo. & Ark. (No report)			
M. K. T. Lines	5,062	4,605	91.0
Mo. Pac.	17,517	15,535	88.7
St. L. S. F.	13,740	9,054	65.9
St. L. S. W.	3,764	2,635	70.0
Texas & N. O.	5,373	8,357	155.5
Texas & Pac.	4,320	3,372	78.1
Texas Mexican	8	254	(1)
Total Class I	57,723	55,641	96.4
Minor Roads	148	4,023	(1)
Grand total	57,871	59,672	103.1
Total Western	315,435	293,182	92.9
Minor Roads	1,507	8,952	594.0
Grand total	316,992	302,134	95.3
Grand total: All districts	723,859	705,450	97.5
Minor Roads	2,505	16,683	666.0
Grand total	726,364	722,139	99.4
Canadian Roads			
A. C. & H. B.	110	158	143.6
Can. Nat'l.	61,045	61,073	100.0
Can. Pac.	53,076	50,526	93.4
Ont. Northland	283	1,045	369.3
Tor. H. & B.	571	474	83.0
Total	116,033	113,276	97.6

[1] Percentage over 1,000.

SEMIMONTHLY REVENUE FREIGHT CAR LOCATION SUMMARY—CLASS I ROADS

January 1, 1941

Railroads	Box, Auto, and Furniture			
	Ownership	On Line	Percent 1941	Percent 1940
Eastern District				
Ann Arbor	867	843	97.2	93.8
B. & Aroos	2,450	1,534	62.6	60.0
B. & Maine	2,956	7,007	237.0	221.6
Central Vt	1,265	1,510	119.4	74.4
C. I. & L	817	1,586	194.1	152.8
D. & H	2,650	3,726	140.6	132.5
D. L. & W	7,520	6,905	91.8	103.1
Detroit & Mac	195	222	113.8	113.7
D. & T. S. L		265		
D. T. & I	2,223	2,151	96.5	68.4
Erie	10,360	12,329	119.0	125.5
G. T. W	8,539	7,209	84.4	70.7
L. & H. R	14	164	(1)	864.3
L. & N. E	941	526	55.9	68.1
Lehigh Val	4,365	6,955	159.3	182.0
Maine Central	3,131	3,326	106.2	86.7
Monongahela		58		
Montour		17		
N. Y. C. System	61,145	60,875	99.6	99.5
N. Y. C. & St. L	6,052	6,367	105.2	105.3
N. Y. N. H. & H	7,807	11,092	140.9	115.8
N. Y. O. & W	57	744	(1)	(1)
N. Y. S. & W	63	677	(1)	
P. M	9,712	8,823	90.9	83.4
P. & L. E	4,024	2,993	74.5	88.4
Pitts. & Shaw	8	26	325.0	190.0
P. & W. Va		291		
P. S. & N	143	103	72.0	84.0
Rutland	946	860	90.9	103.8
Wabash	11,438	10,835	94.7	102.7
W. & L. E	2,382	1,735	72.8	76.1
Total	152,075	161,676	106.3	104.2
Allegheny District				
A. C. & Y	270	438	162.2	170.1
B. & O	30,202	28,337	93.8	95.5
B. & L. E	690	239	38.3	112.6
C. R. R. of N. J	3,087	4,994	161.8	182.2
Cumb. & Pa		30		
Long Island	29	1,769	(1)	(1)
P-R Seashore Lines		917		
Penna. System	76,813	69,312	90.2	103.1
Reading Co	8,685	10,457	120.4	134.9
Union (Pitts.)	17	465	(1)	(1)
Western Md	2,209	1,969	89.1	99.5
Total	121,912	118,918	97.5	107.7
Pocahontas District				
C. & O	11,350	9,358	82.7	83.4
N. & W	8,248	7,843	95.1	97.3
Virginian	75	536	714.7	618.7
Total	19,673	17,765	90.3	94.4
Southern District				
A. & W. P.-W. of A	410	532	129.8	109.6
A. B. & C	201	392	195.0	156.7
A. C. L	9,910	11,593	117.0	116.6
Central of Ga	5,102	5,022	98.4	87.3
C. & W. C	534	556	92.4	101.6
Clinchfield	590	734	124.4	109.0
Col. & Green	304	163	53.6	63.2
F. E. C	194	811	418.0	378.5
Georgia & Fla	308	261	84.7	74.1
Georgia	646	647	100.2	93.0
G. M. & O	3,387	3,316	97.9	120.0
Ill. Cent. Sys	19,228	17,035	88.6	94.6
L. & N	15,995	15,149	94.7	102.3
Miss. Cent	37	128	345.9	243.2
N. C. & St. L	3,580	3,488	97.4	98.2
Norfolk Sou	521	661	126.9	97.6
R. F. & P	506	710	140.3	131.7
S. A. L	10,226	10,278	100.5	94.3
Southern Sys	23,475	33,041	112.1	104.0
Tenn. Cent	178	325	182.6	189.4
Total	101,432	104,877	103.4	102.2
Northwestern District				
C. & N. W.-C. St. P. M. & O	24,809	29,193	117.7	89.2
C. G. W	3,247	2,929	90.2	93.5
C. M. St. P. & P	32,790	30,058	91.7	91.8
D. M. & I. R	345	258	74.8	69.7
D. S. S. & A	293	287	98.0	137.6
E. J. & E	773	2,105	272.3	249.5
G. B. & W	421	471	111.9	112.7
G. N	24,227	20,445	84.4	81.8
L. S. & I	83	86	103.6	219.4
M. & St. L	2,131	2,215	103.9	103.6
M. St. P. & S. S. M	10,039	9,057	90.5	92.3

SEMIMONTHLY REVENUE FREIGHT CAR LOCATION SUMMARY—CLASS I ROADS—Continued

January 1, 1941

Railroads	Box, Auto, and Furniture			
	Ownership	On Line	Percent 1941	Percent 1940
Southwestern District—Continued				
Nor. Pac	21,497	16,715	77.9	82.4
Spokane Int	22	122	554.5	497.4
S. P. & S	277	1,777	641.5	665.0
Total	129,944	115,748	89.7	89.3
Central Western District				
A. T. & S. F. Sys	31,462	28,990	92.2	92.0
Alton	2,103	3,489	165.8	163.4
C. & E. I	1,223	1,997	162.5	153.1
C. & I. M	324	271	83.0	70.7
C. B. & Q	20,701	17,570	84.6	82.2
Colo. & Southern	923	1,905	192.3	199.3
C. R. I. & P	19,719	15,512	78.7	81.1
D. & R. G. W	4,333	2,996	69.1	74.0
D. & S. L	287	515	183.1	191.1
Ft. W. & D. C	631	999	169.8	168.1
Ill. Terminal	410	703	171.5	177.1
Missouri Illinois	250	630	172.0	193.8
Nevada Northern	6	25	583.3	633.3
N. W. Pac	224	823	367.4	223.0
S. P. (Pacific)	20,650	21,024	103.9	92.9
T. P. & W	38	152	400.0	423.6
U. P. System	25,378	22,222	87.6	87.7
Utah		91		
Western Pacific	2,055	2,022	103.8	97.7
Total	131,462	122,418	93.2	91.0
Southwestern District				
B.-R. I	14	159	(1)	933.2
G. C. Lines	1,837	1,933	103.3	77.5
I.-G. N	2,677	1,691	65.1	83.0
K. O. S	1,678	1,851	110.9	107.4
K. O. & G	11	116	(1)	921.4
La. & Ark	1,159	1,359	117.7	123.2
M. V	4	57	(1)	(1)
Mo. & Arkansas	24	151	629.2	747.8
M. K. T. Lines	4,754	5,235	110.0	110.1
Mo. Pac	16,552	13,783	83.2	83.0
St. L. S. F	14,314	10,481	73.2	70.5
St. L. S. W	3,110	3,033	98.9	103.8
Texas & N. O	5,222	7,811	149.6	122.5
Texas & Pacific	4,259	3,779	88.9	83.9
Total	54,992	51,423	93.5	93.7
Grand total: Western districts	307,398	289,729	94.3	93.8
Grand total: All districts	702,499	692,605	98.6	98.4
Canadian Roads				
Can. Nat'l	54,370	53,210	97.9	93.3
Can. Pac	55,629	52,792	94.9	94.9
Total	110,499	106,002	96.0	93.6

(1) Percentage over 1,000.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 25th day of July A. D. 1947.

It appearing, that by order dated December 18, 1946, upon our own motion, we instituted an investigation to determine whether the establishment of a rate of $2 per day, or other increased rate, to be paid to the owner for the use of each car during periods of car shortages (except tank and refrigerator) by any common carrier would promote greater efficiency in the use and increase the supply of cars; with a view to the making of findings and the entry of an order or orders, under the authority of the Interstate Commerce Act (49 U. S. Code, sections 1–27) and particularly section 1 (10) (11) (13) and (14) thereof, requiring the establishment of an increased basis and rate of compensation for car hire during periods of car shortages if it be found that it will promote greater efficiency in the use and increase the supply of cars;

It further appearing, that this proceeding has been duly heard and submitted by the parties, and that full investigation of the matters and things involved has been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; it is ordered, that:

§ 95.1100 *Per diem charge increased.* The present per diem charge to be paid to the owner for the use of freight cars, other than tank and refrigerator cars, shall be increased to $2.00, effective October 1, 1947 and expiring 11:59 p. m., March 31, 1948.

It is further ordered, that this order shall become effective October 1, 1947, and shall expire at 11:59 p. m., March 31, 1948, unless otherwise modified, changed, suspended, or annulled by order of this Commission; that a copy of this order and direction be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the office of the Secretary of the Commission, at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

(40 Stat. 101, sec. 402; 41 Stat. 476, sec. 4; 54 Stat. 901, 911, 49 U. S. C. 1 (10)–(17), 15 (2))

By the Commisison.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 47-7515; Filed, Aug. 11, 1947; 8:52 a. m.]

[No. 23869]

PART 95—CAR SERVICE

FILING CAR SERVICE REGULATIONS WITH COMMISSION

1. Car service rules published by the Association of American Railroads in behalf of rail carriers not shown to have been or to be unlawful, but found that respondents as a group have failed to furnish adequate car service.

2. Carriers required to file their car service rules and regulations with the Commission.

3. Proceeding held open for such further action as may be warranted.

Report of the Commission. Exceptions to the report proposed by the examiner were voiced at the oral argument by the Office of Defense Transportation (hereinafter referred to as O. D. T.), by respondents, and by certain other parties.

This proceeding is an investigation on our own motion, instituted by order of December 18, 1946, as modified February 3, 1947, for the purpose of determining

(1) whether the rules, regulations, and practices with respect to the use, control, supply, movement, distribution, exchange, interchange, and return of railroad freight carrying cars[1] are unreasonable, or otherwise unlawful; whether freight cars are being wastefully, uneconomically or inefficiently used, controlled, supplied, moved, exchanged, interchanged, and returned, and whether such cars are being unfairly or inequitably distributed among shippers, and (2) whether common carriers by railroad have been and are providing themselves with safe and adequate freight cars for performing as common carriers their car service, with a view to making findings and the entry of an order or orders, under section 1 (10) (11) (13) (14) (a) and (21) section 2, section 3 (1) and section 15 (1) of the Interstate Commerce Act, requiring the establishment of such reasonable rules, regulations, and practices as may be necessary to correct any unreasonableness and to remove any other unlawfulness found to exist, and requiring the carriers to provide themselves with such freight cars as may be found necessary to enable them to furnish safe and adequate car service.

All common carriers by railroad subject to the act were made respondents, and a copy of the order of investigation was served upon the Association of American Railroads, Car Service Division, herein sometimes referred to as the Association, as well as upon the carriers.

An initial hearing was held (1) to devise ways and means of making the best use of the available car supply, and (2) to determine whether this Commission should promulgate car service rules. The latter question was made the subject of briefs, a proposed report, and oral argument.

Parties presenting evidence. Evidence was presented by six employees of the Commission, viz, the Director and five field agents of its Bureau of Service; by the Chairman of the Car Service Division, in behalf of the Association and rail carriers members of the Association; by a Traffic Consultant, for himself and as a friend of the rail carriers; briefly by the American Can Company, manufacturer of metal and fiber containers at 65 plants in 23 States; briefly by the Indiana State Chamber of Commerce, chiefly with respect to the box car situation in that area; by two individuals representing coal producers in western Pennsylvania and northern West Virginia, and pertaining to coal cars in those areas; by the National League of Wholesale Fresh Fruit and Vegetable Distributors, with respect to refrigerator cars; by the National Agricultural Transportation Committee, for cooperative associations throughout the United States handling agricultural products, and specifically with reference to delays in transit of carload shipments of grain; by several persons representing a multitude of shippers and receivers of freight utilizing box cars in an area extending from the Illinois-Indiana State line westward to the Rocky Mountains and from the Canadian border southward to the Rio Grande River, and comprising individuals and companies operating many hundreds of country and terminal grain elevators, a grain and feed association having over a thousand members, numerous milling companies which utilize grain in the manufacture of flour and feeds, grain markets, boards of trade, traffic associations, and the Illinois Commerce Commission. No evidence was offered by any railroad official or other employee of any individual railroad company.

Car service rules. Rail carriers commonly acquire and own freight cars of the type or types needed for loading the character of freight originating on their respective lines. Those originating grain and grain products or merchandise need high class box cars, those serving coal fields use gondola and hopper cars extensively, those carrying hogs and cattle require livestock cars, etc.

Shipments placed in freight cars owned by an originating carrier ordinarily may, if other cars are not available, be billed by shippers from any point of origin to any point of destination in the United States, as well as to many destination points in Canada and Mexico. Regulations to guide and govern the carriers respecting the return of such cars to their owners are formulated by representatives of the rail carriers, are adopted by votes of carriers owning a majority of the freight cars involved, are published by the Association in behalf of such carriers, and are designated car service rules.[2] In similar fashion rules are established which fix the compensation, known as the per diem rate, to be paid at the end of each month to the car owner for the use of its general service cars when on the lines of other railroads. One per diem rule, hereinafter discussed, relates, among other things, to the movement and distribution of freight cars.

Rules pertaining to the selection of cars to be loaded with shipments destined to points not situated on the originating railroad; and the return of freight cars to their owners when unloaded at points on other lines, are designated car service rules 1 to 6, inclusive, and are reproduced in the appendix hereto. They contemplate the retention of owned cars on owners' lines so far as practicable, and provide with specified exceptions that a freight car, unloaded at a point on the line of a carrier other than the owner, shall be moved, loaded or empty, to or in the direction of the owning road. Per diem rule 19, also reproduced in the Appendix, provides for the creation and maintenance of a Car Service Division, with headquarters at Washington, D. C., with plenary power to authorize departures from the car service rules, to transfer cars from one railroad or territory to another when necessary to meet traffic conditions, and to perform other indicated duties.

When the supply of freight cars is sufficient to meet current demands, approximately 85 percent of the units unloaded at points not situated on the owning road are handled in accordance with the car service rules, and compliance with the rules to this extent enables the carriers to maintain their equipment and meet the requirements of the shipping public. At such periods, many of the 15 percent failures to observe the rules are due to reloading, by consignees, of cars they have made empty, and billing of such loads to points not in the direction of owning railroads.

In periods like the present, when the car supply falls short of demands, maximum tonnage is handled by permitting cars to be reloaded immediately after a load is removed, without regard to ownership of cars or destination of shipments. At the present time the car service rules to a large extent are suspended and disregarded by both carriers and shippers. Generally a consignee receiving a loaded shipment in a railroad owned car may now remove the lading and immediately reload the car to a point in any direction, whereas, under provisions in the car service rules, if it had no load for a destination in the direction of the owning railroad it would be expected to release the car and hold its out-bound shipment until another car could be furnished. Shippers have a choice of many routes, direct and indirect, over which to forward their shipments, pursuant to tariff provisions, as explained in decisions by this Commission. Under the car service rules, if a car cannot be loaded to or in the direction of the owning road, it ordinarily retraces the route which the loaded car traveled, even though the route be circuitous, unless some arrangement be made, as authorized by the rules, for short routing the car to the line of the owner.

The present practice of largely disregarding the car service rules frequently results in the accumulation of box cars on individual railroads and in districts which receive more freight tonnage than they originate, particularly on railroad lines and in States eastward from Pittsburgh, Pa., and Buffalo, N. Y. To counteract this tendency, and to cause the transfer of such cars with a minimum of service to localities which originate more freight than they receive, car relocation orders have been served upon specified carriers, directing that a designated number of cars be delivered at named junctions to other indicated railroads. Orders of this character pertaining to box cars for western districts have been issued during the past several months by the Car Service Division, pursuant to authority conferred by per diem rule 19, and more recently by the Commission, through the Chairman of the Car Service Division, who has been appointed as Agent of the Commission. But up to the time of the hearing herein, the results of such orders had fallen considerably short of the hopes and expectations of shippers in the Central West and Northwest. Relocation orders in effect in the early part of 1947 did not produce the results desired, due in part to adverse weather conditions. Shortly

[1] The investigation does not include the distribution of coal cars at mines or related matters embraced within section 1, paragraph (12) of the Interstate Commerce Act, or issues involved in prior proceedings respecting distribution of coal cars at mines.

[2] The railroad car service rules here under consideration are published, as information, in the editorial section of the Official Railway Equipment Register. The issue for July 1947 is Agent M. A. Zenobia's tariff, I. C. C. No. 284.

before the hearing, the number of box cars ordered moved from eastern lines to western lines was increased to 1,200 daily, with privilege of stopping around 110 daily at intermediate points in central territory, to be loaded westward. Western shippers have suggested 1,500 daily, and have urged a minimum of 1,200 daily without stops to load at intermediate points. The movement of freight tonnage is greater from West to East than in the opposite direction, and considerable west-bound empty mileage is necessary to afford western shippers a supply of box cars based on units owned by railroads serving those areas, no matter whether the cars be handled under general car service rules or under special orders.

On March 1, 1947, box cars were scattered to such an extent that class I railroads had on their rails but 16.4 percent of the units owned. If the Association or the Commission should now enter an order requiring rigid observance of the car service rules, carriers would be obliged to immediately start cars rolling in the direction of the owning roads, loaded or empty, and, due to cross hauling over direct and indirect routes of empty cars, when loads in the direction of the home road were not available, the aggregate volume of traffic handled might be materially reduced. In instances where carriers have provided themselves with a particular type of car for the tonnage they originate, and which terminate but small quantities of interline freight carried in that class of equipment, the Association by special orders has sometimes directed that such cars be returned to the home line immediately after being unloaded. An example is the open-top cars of certain coal carriers which now are the subject of outstanding orders. Similar orders, in addition to the aforementioned car relocation orders, could be entered with respect to box cars, purchased by railroads like the Great Northern,[3] Northern Pacific, and the Minneapolis & St. Louis, and constructed primarily for the carrying of grain and grain products. Many of the box cars now being moved to the Northwest and Central West under car relocation orders, while usable for rough freight, are not suitable for commodities like flour, without coopering, cleaning, and lining, which require time, and result in car delays.

Car supply and distribution. For the week ended March 8, 1947, car shortages were reported in all districts of the United States, but not on all railroads. For freight carrying cars of all kinds the shortages averaged 36,698 daily, for box cars 25,292, and for open-top cars 10,365. The shortages appear to be due, in part to the inability of railroads to acquire new equipment in the past few years when manufacturers were otherwise engaged at the direction of the Federal government, in part to the fact that the number of carloads of freight offered for movement annually since termination of the war has materially exceeded the number of carloads originated in any year in the 10-year period, 1931 to 1940, prior to participation by the United States in war activities, and to other miscellaneous factors. The car-lot shipments of revenue freight in 1946, as compiled by the Association and amounting to 41,341,205 carloads, exceeded by 3,670,741 loads, or about 11 percent, the number of carloads originated in 1937, the maximum for any year in the designated 10-year period. The total freight carrying cars owned and leased by class I railroads on January 1, 1947, approximating 1,740,000, was about 18,200 less than the number reported for January 1, 1937. The current post-war freight car shortage is the only severe peace-time car shortage, as described of record, that has occurred since 1922–1923. Shortages reported by rail carriers for the latter part of October 1922, as pointed out in the Commission's 36th Annual Report, page 16, amounted to 179,239 cars, more than four times as many as reported for the first week of March 1947.

Much of the evidence herein pertains to the supply and distribution of box cars. The districts presenting the most urgent appeals for additional cars of this type are (1) the Northwest, particularly the States of Minnesota, Montana, North Dakota, South Dakota, and (2) the Central West, especially Kansas, Nebraska, Colorado, Iowa, Missouri, and Illinois, where country elevators are generally filled to near working capacity with grain which cannot be shipped for lack of carrying equipment, and where, because many country elevators are unable to receive proffered grain, large quantities of the 1946 crops remain on farms.

The need for cars in the Middle West has been so urgent in recent months to move corn having moisture content, and to transport wheat, that open-top cars have been used extensively. Corn has also been transported in livestock cars.

On March 1, 1947, the Great Northern had on its lines but 58.6 percent as many box cars as it owned, Northern Pacific 65.6 percent, Minneapolis & St. Louis 61.5 percent and the Soo Line 78 percent. These are important carriers of grain from points of origin, and their box-car deficit on that date aggregated 19,846 units. The significance of this figure becomes apparent in the light of evidence herein that on the basis of recent averages each box car has handled a little more than two loads per month. For all class I carriers in the northwest group the percentage of box cars on line to ownership March 1 was 87.6.

In the Central West, the D. & R. G. W. had on its lines on March 1 box cars equal to 54.2 percent of its ownership, Burlington 65.4 percent, Santa Fe 85.6 percent, Union Pacific 88 percent, Rock Island 92.1 percent, Southern Pacific, including its lines on the Pacific Coast, 100 percent, Alton 105.1 percent, Western Pacific, extending from Salt Lake City, Utah, to San Francisco, Calif., 144.1 percent, and, for all class I railroads in the central western group 88.6 percent. In the Southwest, box cars on the lines of individual roads ranged from 62.5 percent of ownership on the Frisco to 165.7 percent on the Texas & New Orleans Railroad Company, and for the entire southwestern group of class I railroads the average was 101.3 percent. Recent complaints from grain shippers in the Central West have come most frequently from points in Kansas, Nebraska, and Colorado, on the Burlington, Rock Island, and Union Pacific which, on March 1, 1947, had on their lines 12,093 less box cars than they owned.

A comparatively small rail carrier which on March 1, 1947, had on its rails 3,453 box cars, equal to 361.2 percent of ownership, is the Elgin, Joliet & Eastern. This railroad, less than 150 miles in length, starts from Waukegan, Ill., north of Chicago, Ill., and extends southwest, south, southeast, east, and northeastward in a semi-circle outside of and around Chicago to Gary and Porter, Ind.

Within official territory an average of 105.7 percent of ownership was reported respecting box cars on class I railroads other than the Chesapeake & Ohio, Norfolk & Western, and Virginian, in the Pocahontas District, and on those three roads an average of 66.9 percent. Reports by the two roads last named indicate no box car shortage on their lines in week ended March 8, 1947. The percentage figure given for official territory, 105.7, includes some railroads whose lines extend from the Atlantic Seaboard to Chicago or St. Louis, or both, and does not reveal whether or not the cars on such railroads are evenly distributed. Grain shippers and other shippers at some points in the western part of official territory, especially in Indiana, are not receiving an adequate supply of freight cars. They say the relocation orders, directing the movement of box cars from eastern lines to western lines, have a tendency to drain cars from this district, and they ask that their needs be not overlooked. Railroads operating lines which traverse Indiana include the Baltimore & Ohio which, on March 1, 1947, had on its lines box cars equal to 86.2 percent of its ownership; Chesapeake & Ohio 64.4 percent; Chicago, Indianapolis & Louisville Railway Company 184.3 percent; Erie Railroad Company 94.6 percent; New York Central System 102 percent; New York, Chicago & St. Louis Railroad Company 83.6 percent; The Pennsylvania 101.7 percent; and Wabash Railway Company, with lines running from Buffalo westward to St. Louis, Kansas City,

[3] Great Northern Railway Company. Other short names used herein are Alton for Alton Railroad Company; Baltimore & Ohio for Baltimore & Ohio Railroad Company; Boston & Maine for Boston & Maine Railroad; Burlington for Chicago, Burlington & Quincy Railroad Company; Chesapeake & Ohio for Chesapeake & Ohio Railway Company; D. & R. G. W. for Denver & Rio Grande Western Railroad Company; Elgin, Joliet & Eastern for Elgin, Joliet & Eastern Railway Company; Frisco for St. Louis-San Francisco Railway Company; Minneapolis & St. Louis for Minneapolis & St. Louis Railroad Company; New Haven for New York, New Haven & Hartford Railroad Company; New York Central for New York Central Railroad System; Norfolk & Western for Norfolk & Western Railway Company; Northern Pacific for Northern Pacific Railway Company; Pennsylvania for Pennsylvania Railroad Company; Rock Island for Chicago, Rock Island & Pacific Railway Company; Santa Fe for Atchison, Topeka & Santa Fe Railway Company; Soo Line for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Southern Pacific for Southern Pacific Company; Union Pacific for Union Pacific Railroad Company; Virginian for Virginian Railway Company; and Western Pacific for Western Pacific Railroad Company.

and Omaha, 80.3 percent. Each of these carriers reported shortages of box cars in the week ended March 8, 1947, except the Chicago, Indianapolis & Louisville, which did not report any shortage of any class of cars. The Chesapeake & Ohio reported a box car shortage of only 15 cars.

Class I carriers in southern territory reported that box cars on their respective lines March 1, 1947, averaged 92.8 percent of ownership. No evidence was offered by any shipper with reference to the supply or distribution of freight cars in any designated area of southern territory.

In the following table, compiled from exhibits of record, there is shown for designated railroads in the Eastern district,[4] Allegheny district,[5] Northwest district,[6] and Central Western district,[7] in columns (1) the number of box cars owned on the dates given, and in columns (2) the percentage relations of box cars on line to box cars owned at those periods.

	Eastern		Allegheny	
	(1)	(2)	(1)	(2)
1946				
July 1	157,480	109.7	124,175	100.7
Aug. 1	157,187	109.7	124,219	102.3
Sept. 1	156,897	110.3	124,058	104.0
Oct. 1	156,732	108.9	123,818	103.3
Nov. 1	156,283	113.6	123,729	104.9
Dec. 1	155,760	112.2	124,012	104.6
1947				
Jan. 1	155,093	107.8	123,918	104.0
Feb. 15	155,074	107.0	124,198	103.5

	Northwest		Central West	
	(1)	(2)	(1)	(2)
1946				
July 1	121,835	83.7	139,021	99.6
Aug. 1	121,364	80.7	139,021	97.4
Sept. 1	120,670	87.4	139,344	98.5
Oct. 1	120,111	100.0	139,147	97.7
Nov. 1	119,936	91.7	138,691	94.1
Dec. 1	119,644	82.7	138,686	94.2
1947				
Jan. 1	119,365	82.9	139,561	95.5
Feb. 15	118,987	80.9	139,410	91.4

Freight car delays. Many of the car delays reported by shippers and others suggest a shortage of motive power, and, in some instances, a lack of personnel. The order of investigation does not specifically include an inquiry respecting the supply and operation of locomotives, and comparatively little evidence was offered concerning that feature. Among other reasons given for car delays are adverse weather in recent winter months, the 5-day week which is observed by many shippers and receivers of freight, accumulation and holding by railroads of cars for prospective loading, lack of railroad supervision; and the attitude of railroad workers.

The Commission's Bureau of Service has 70 field agents scattered throughout the country, about one-half eastward and the other one-half westward from St. Louis and Chicago, who make periodical and special inspections in their respective territories, and special investigations in response to complaints from shippers and instructions from the Washington office, regarding the handling, supply, and distribution by carriers of railway equipment. They also perform such other duties as may be assigned them. Their investigations are in the nature of spot checks, and in the past six months every large city and important terminal in the United States were visited. Information respecting car delays discovered by them is sometimes conveyed directly to the carriers involved, and sometimes transmitted through the Washington office. In February 1947 these field operators visited in the aggregate more than 1,100 railroad agents and yards, and contacted some 700 industry officials and about 2,200 railroad officials. They do not generally investigate shortages of railroad motive power as distinguished from shortages of cars. However, a summary exhibit of reports by field agents, regarding their activities in February 1947 contains a few references to locomotive shortages, as hereinafter pointed out. Five of the field men appeared in person and testified about car delays, and the advisability of formulating and establishing a rule or rules designed to eliminate or minimize such delays.

The New Haven, operating lines in New England, owned on February 15, 1947, a total of 3,719 box cars. It had on its line on that date 12,290 such cars, or more than three times its ownership. As to freight carrying cars of all kinds, its ownership was 6,450 and the number on line 17,190, equal to 266.5 percent of ownership. A check made on February 17, 18, and 19, 1947, respecting freight car handling by this line at Bridgeport, Conn., revealed delays of 2 to 5 days in switching 40 inbound loads to unloading points; 2 to 9 days in moving 9 cars after they were loaded by the shipper; 3 to 4 days in starting 27 cars destined to western points; and the retention for 3 to 7 days, before release, of 17 cars containing company material. No explanation was offered regarding the reasons for these delays. The reported delays would seem to indicate that it has on its rails more freight cars than can be handled efficiently.

Another carrier in New England which appears to be heavily overstocked with freight cars is the Boston & Maine which, on February 15, 1947, owned 2,745 box cars and had on line 6,483, equal to 236.2 percent of ownership. By contrast, the Minneapolis & St. Louis, operating lines in Minnesota, South Dakota, Iowa, and Illinois, owned on that date 2,692 box cars, and had on line but 1,386 such cars, equal to 51.5 percent of its ownership.

These records lend strong support to the charges emphasized by western shippers that some of the eastern rail carriers are alleviating car shortages on their lines by the use of box cars owned by other railroads.

Numerous car delays, generally of the type which occurred on the New Haven, were described in the February reports of the Commission's field agents. Among the terminal points at which delays occurred were Trenton, N. J., Rochester, N. Y., Norristown and Reading, Pa., Cleveland and Toledo, Ohio, Indianapolis, Ind., Chicago and Edwardsville, Ill., St. Louis, Jacksonville, Fla., Wichita Falls, Tex., Minneapolis, Minn., and Portland, Oreg. They say an unreasonable amount of time is consumed by rail carriers in switching loaded and empty cars between railroad yards and industries, and recommend the establishment of a rule fixing a time limit of 24 hours for the placement of loaded cars after arrival in break-up yards at destination points, and 24 hours for the removal of empties after the lading has been removed by consignees. They also describe as inadequate the car service records maintained by some of the carriers. No specific 24-hour rule was proposed, nor did they outline the character of records which they think should be maintained.

At Toledo, Ohio, a service agent found that east-bound and west-bound trains were delayed in February as long as 27 hours, and freight cars 3 to 9 days, due to lack of motive power; at Gardenville, N. Y., five trains were held 17 to 32 hours awaiting motive power; and at Syracuse, N. Y., five trains were delayed 20 to 43 hours each awaiting motive power. At Selkirk, N. Y., due to shortage of motive power and yard conditions, a train of 102 cars, ready to go forward, was held for 9 days; another train went forward after waiting 8 days; and still another, containing 112 cars, had been on hand 7 days when the yard was checked. Shortages of motive power at Detroit, Mich., and Buffalo in February were also reported by field agents.

Within Chicago, where some 4,000 carloads of merchandise were held under load in the early part of 1947, the congestion became so serious that an embargo was issued against further rail shipments of merchandise to that city. Box cars moving from eastern areas to western railroads, under relocation orders, were billed through or around Chicago and not allowed to carry tonnage consigned to that point or to pick up shipments at Chicago for points beyond. The congestion there was occasioned in part by snow storms, cold weather, a shortage of railroad motive power, both road and yard, and in part by a shortage of experienced shop and yard forces. However, car delays at Chicago have not been confined to the winter months. A spot check of grain shipments received at 14 elevators within the Chicago district during indicated periods in the six months ended December 31, 1946, and covering the movement of 1,387 carloads of grain after inspection had been completed, disclosed that an average of 4.3 days per carload elapsed between the

[4] Boston & Maine, Delaware & Hudson Railroad Corporation, Delaware, Lackawanna & Western Railroad Company, Erie Railroad, Grand Trunk Western Railroad Company, Lehigh Valley Railroad Company, New York Central, New York, Chicago & St. Louis, New Haven, Pere Marquette Railway Company, and Wabash.

[5] Baltimore & Ohio, Central Railroad Company of New Jersey, Pennsylvania Railroad, and Reading Company.

[6] Chicago & North Western Railway Company, Chicago Great Western Railroad Company, Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Great Northern, Northern Pacific, and Soo Line.

[7] Burlington, Rock Island, Santa Fe, Southern Pacific, and Union Pacific.

time the carriers were requested to switch the cars from inspection tracks and the time of placement at elevator unloading points. One carload was spotted on the day the placement order was delivered to the carrier. From 1 to 14 days were required to switch the others. Reciprocal demurrage charges, payable by carriers to shippers when the former fail to spot cars within a specified time after being requested to do so, is suggested by operators of these grain elevators as an incentive to speed up car movement.

The Farm Bureau Cooperative Association, operating a grain elevator at Columbus, Ohio, received at that point from January 22 to March 7, 1947, inclusive, grain originating in Illinois, Indiana, and Ohio, totaling 144 carloads, of which 79 loads moved over single-line routes, and the other 65 over routes comprising lines of two railroads. The elapsed time from date of shipment to date of receipt at destination ranged from 2 to 24 days per car, and averaged 8.3 days. As illustrative of the service over single-line routes, the Baltimore & Ohio moved six carloads from Decatur, Ill., to Columbus in 5, 6, 6, 8, 8, and 11 days, respectively; the New York Central 10 carloads from Indianapolis, Ind., to Columbus, in 5, 6, 6, 7, 7, 7, 7, 8, 8, and 9 days, respectively; and the Pennsylvania six carloads from Indianapolis to Columbus, less than 200 miles over its main line, in 9, 11, 11, 12, 12, and 15 days, respectively. This slow movement suggested lack of motive power, or shortage of personnel, or both. The shipments of grain were not stopped in transit for inspection.

Milling companies, manufacturing flour and other grain products, now operate generally on a 7-day week except when their activities are curtailed directly or indirectly by a lack of freight cars. The operating time lost for this reason is substantial. Those which have mills in the Central West formerly counted on 5 days in transit from the Missouri River to New York, N. Y., but now they will not promise delivery there in less than 10 days. The unsatisfactory service, described as the poorest the railroads have ever provided, is attributed to a let down in effort since termination of the war, and to employee absenteeism, indifference, and disinclination to work. The evidence contains a reference to one instance where, during the hunting season, 285 railroad men out of a potential force of 310, failed to report for duty. The witness for the American Can Company, operating plants in 23 states, testified that transit time is slower than at any period in the memory of those familiar with railroad transportation.

Coal producers in western Pennsylvania and northern West Virginia are concerned about a practice which they regard as a wasteful, uneconomic, and inefficient use of coal cars, and a resulting diminution in the supply of cars available to their mines. Their criticism is directed particularly at the Baltimore & Ohio which, in the past few years, has constructed many miles of track from its lines to new mining operations, without increasing its car supply, and then, by distributing cars among a greatly augmented number of coal producers, has reduced the supply formerly available to complainants' mines. They calculate that additional switching is required to move cars to and from an increased number of mines, and that the average turn-around time for coal carrying units is lengthened.

Despite the reported car delays, interruptions due to labor strikes in the past year or more, and unsatisfactory service reported by shippers, statistical records indicate that the rail carriers have been handling a substantial volume of traffic per railroad car in service. Based on freight cars owned by the railroads and private car lines the first of each year, the revenue freight originated in carloads, as compiled by the Association, averaged 20.5 loads per car in 1946, and 20.7, 21.6, 21.2, 21.8, and 22.3 loads per car in 1945, 1944, 1943, 1942, and 1941, respectively. In addition, they carried freight in less-carload lots, as well as carloads of railroad fuel and other company material. Loaded car miles and average lengths of hauls are not shown of record.

Freight cars owned by railroads and private car companies January 1, 1946, totaling 2,014,654, exceeded by 114,157 the number owned on January 1, 1941. The railroads recently arranged to acquire approximately 132,000 new freight cars. To permit their construction, steel companies agreed to supply car builders with enough steel to make 7,000 cars per month in April, May, and June, 1947, and 10,000 per month thereafter.

Proposed I. C. C. rules. Section 1 (14) (a) of the act authorizes the Commission, after hearing, to establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad, including the compensation to be paid for the use of any car not owned by the carrier using it. The car service rules published by the Association have been largely suspended and disregarded during the past several months, as hitherto explained, and the relocation and distribution of freight cars as between carriers are now governed in large measure by special orders issued by this Commission and the Association.

Shippers in the Northwest and Central West favor leaving with the Association the establishment and administration of car service rules and the distribution of freight cars as between railroads, but they emphasize that their districts have not been accorded a car supply in recent months based on the number of units owned by railroads serving those districts. They urge us, to require, by order, a more equitable distribution of cars, particularly box cars. They recommend, however, the use of service orders rather than car service rules, with the object of getting cars quickly to western points where they are badly needed. They advocate that an increased per diem rate, or other monetary penalty, be applied against those railroads which fail to handle freight cars with reasonable promptness at terminals and other places. O. D. T. order No. 18–A, pertaining to heavy loading of freight cars, has promoted efficient utilization of freight cars, and they ask that a similar regulation be issued by us if operations by the O. D. T. should be terminated.

Northwestern County Elevator Association, representing more than 1,200 country elevators in Minnesota, Montana, North Dakota and South Dakota, is not convinced that new rules are necessary. They contend we have ample power to order freight cars to localities accorded less than their proper supply. As to faster movement of cars at terminals and in road service, the Association is of opinion that the railroads in the Northwest have done the best they could with the kind of help available.

Southwestern Industrial Traffic League and Texas Industrial Traffic League suggest that a penalty per diem rate be applied during the car shortage emergency, but ask that it be accomplished by service orders and not be general rules. They join numerous other shippers in the West in requesting the issuance of service orders, requiring the return to western railroads of cars they own or the equivalent thereof, and emphasize their opinion that this Commission can serve commercial and industrial interests better by regulating railroad car service matters than by directly undertaking the performance of those services itself.

National Industrial Traffic League urges that there is no evidence that the car service rules are unlawful, and, until there is proof of unlawfulness or proof that the rules have become outmoded, or unworkable, or otherwise preventive of efficient and fair use of cars, it opposes the promulgation of a new code of regulations to be designed and enforced by this Commission. It perceives no demand for such action, either by any group of carriers or the shipping public; no unlawful railroad practice that might be cured thereby; and thinks it quite probable that Commission-made car service rules would work against rather than in favor of the public interest.

Indiana State Chamber of Commerce is not persuaded that any regulatory body is in position to issue the detailed instructions necessary to effective distribution of freight cars. The present arrangement, under which administration of car service rules rests primarily upon the Association and the rail carriers, subject to such orders as we may enter, is regarded as an arrangement that ought to be preserved. It asks that relocation orders, directing the movement of freight cars to the West or other areas, be modified to permit the cars to be loaded whenever freight is available for movement to the districts to which the care are destined.

The Western Pennsylvania Coal Operators Association and Northern West Virginia Coal Association express the opinion that maintenance of car service rules by Commission order, whether or not in the form of a schedule of rates, fares, and charges would be unwise, would militate against the best railroad operation, and would slow down rather than speed up car movement.

American Can Company does not see how any rule we might lay down would meet the present situation, and is not sure that such prescribed rules would be workable. It suggests that improvement

in car handling is a job the railroads should do, but concedes that if the carriers should acknowledge they cannot perform the job, prescription by us of rules to prevent car delays, might be the only alternative.

Refrigerator cars owned by private car companies are not governed by the aforementioned car service rules or per diem rules. Their owners are compensated on basis of miles traveled. The National League of Wholesale Fresh Fruit and Vegetable Distributors directs attention to the penalties against shippers under demurrage rules for detention of refrigerator cars, and to the outstanding service order which requires carriers to switch refrigerator cars within 24 hours after release by consignees. This organization, and the trade associations it represents, are of opinion that the only solution to the refrigerator car shortage is for this Commission to establish rules providing penalties against the railroads, payable to car owners, on the same basis as the penalties now paid by shippers and receivers of freight to rail carriers. The organization proposes that we establish car service rules applicable to refrigerator cars under either emergency or normal conditions, and asks us to cease issuing service orders.

The National Agricultural Transportation Committee believes the car service rules would be far more effective if issued and enforced by this Commission. Something in the nature of penalties against carriers is suggested.

Bethlehem Steel Company says the evidence of record does not justify the establishment of a code of Commission-made car service rules to supplant those published by the Association. The record demonstrates, according to its view, that the scarcity and shortage of railroad freight cars is not caused by either the present car service rules or the administration thereof; that there is no reason why this Commission cannot protect the public interest by issuing service orders under section 1 (15) of the act, as in past emergencies; that the car service rules published in behalf of the railroads are flexible and can be quickly modified to meet the needs of industry, but that rules promulgated by us would have the effect of a statute and could be modified only after a hearing. It regards freight car distribution as an operating function of railroad management which the Federal government should not undertake to usurp.

The United States Department of Agriculture emphasizes that prompt action is desirable when dealing with car shortages, particularly when transportation service is necessary to prevent spoilage of food products, and asks that we hold the proceeding open for a time in order that, if warranted by conditions, a further hearing may be held. It declares there is abundant evidence that the railroads in conjunction with the Association have done a commendable job during normal times respecting administration of the car service rules. During emergencies it believes we should enforce, and if necessary administer, rules or service orders, but says no need has been shown for us to undertake the task of issuing permanent orders designed to supplant the Association's rules so long as such rules adequately serve the public interest, and is doubtful if we would have the funds or the personnel to assume the enormous task of administering all the rules all the time.

The O. D. T. asks us to find that respondents have failed to furnish adequate car service; have failed to establish and enforce just and reasonable rules and regulations pertaining thereto; that establishment by respondents of reasonable rules and practices will promote a more adequate car supply in the interest of the public; and that failure of the carriers to furnish adequate car service and to establish and enforce reasonable rules contravenes section 1 (11) of the act and is unlawful.

As support for the requested findings, O. D. T. refers, among other things, to evidence that there is a shortage of all types of equipment, evidence respecting slow movements in road service, delays of cars at terminals, failures to promptly move cars from and to industries, inequitable distribution of cars which it characterizes as national maldistribution, insufficient crews, lack of railroad supervision, and general laxness in carrier operations following termination of the war. It says that car shortages have plagued the nation at intervals throughout the present century, and thinks the long-continued failure of the rail carriers to furnish adequate car service and establish reasonable rules, demands action by us to compel compliance with section 1 (11) of the act.

However, O. D. T. does not recommend that we formulate and establish car service rules, as authorized by section 1 (14) (a) of the act. It advocates rigid observance by the carriers of their car service rules, but opposes the entry of a service order under section 1 (15) of the act, requiring such observance, because that statutory provision relates to emergency conditions, and not to periods when the car supply equals the demand. It also is opposed to the entry of an order directing the carriers to incorporate their car service rules in their tariff schedules. Section 1 (13) provides:

> The Commission is hereby authorized by general or special orders to require all carriers by railroad subject to this part, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for transportation, and be subject to any or all of the provisions of this part relating thereto.

O. D. T. suggests that each railroad be required to file its rules respecting car service with the Director of the Commission's Bureau of Service, and that, after hearing, these rules, with such modifications as we may require, by order, be made obligatory upon each respondent, with the understanding that if any carrier fails to file its proposed rules, the Director of the Bureau of Service will prepare rules which, after hearing, by order shall be prescribed for future application. It contends that any carrier failing to comply with rules so prescribed would be subject to the penalties named in section 1 (17) (a) of the act.

The Association and the class I railroads declare that the distribution and utilization of the freight car supply lie at the heart of railroad operation. They perceive in the evidence of record no factual support for abolition of the present system of private management, and substitution of government control, over the handling and distribution of freight cars, and no evidence that more efficient use of the existing car supply would be accomplished through the promulgation of car service rules by us. They contend that the conditions complained of, if susceptible to relief at all by this Commission, can be remedied by car service orders. They think that the promulgation by us of car service rules would result in the establishment of a budding bureaucracy, at variance with American traditions, and incompatible with the principle of private operation of the railroads.

On the basis of evidence adduced at the hearing and in response to information and recommendations otherwise received from representatives of shippers and carriers, and from our field agents, we are affording by means of service orders, under our emergency powers, such assistance in respect of freight car relocation and distribution as the present emergency demands.

We are convinced that much remains to be accomplished in car detention and movement in order to reach the maximum of practicable efficiency. We believe that such maximum efficiency can be obtained by more wholehearted cooperation by all concerned so as to bring about prompter loading and unloading of cars, and greater expedition in their handling, especially within terminal areas. It is, of course, clear that while the present exceedingly heavy demand for cars for loading continues to exceed the available supply, permanent relief from the existing car shortage cannot be had until car manufacturers succeed in filling a large part of respondents' orders for new equipment, but in the meantime shippers and carriers can help themselves in large measure by the exercise of more cooperative efforts.

Findings. 1. We find that the railroad car service rules here under consideration have not been shown to have been or to be unlawful.

2. We further find that respondent railroads as a group have failed to furnish adequate car service, to the detriment of the shipping public.

3. And we further find, under the provisions of section 1 (13) of the act, that each of the respondent carriers should file with this Commission its rules and regulations with respect to car service.

If it should later appear that conditions might be improved by a modification of, or an addition to, the car service rules as so filed, action by us with that object in view can be taken (1) informally through conferences with and suggestions to railroad representatives; (2) by the issuance of a service order or orders under emergency powers conferred by Section 1, paragraphs (15) and (16) of the act; or (3) by the entry of an or-

der, after hearing, as authorized by Section 1 (14) (a) of the act.

The proceeding will be held open for a time to facilitate any further action which the instant emergency may warrant.

An appropriate order will be entered.

Barnard, Commissioner, concurring in part:

I concur in the decision of the majority that the carriers should be required to file their car service rules with the Commission, but I do not think, however, that the evidence of delays in the handling of cars and the carrier failures to furnish cars is sufficient to warrant Finding Number 2. I would therefore eliminate that Finding.

Mitchell, Commissioner, dissenting:

I can not approve this report because at the hearing one of the presiding Commissioners said, and I quote from the record: "Very concretely, the object of this hearing is to furnish a record on which the Commission might arrive at a decision whether or not it should formulate and promulgate car service rules." The parties had a right to rely upon that statement, which was not withdrawn or modified during the hearing. The report directs the railroads to file their rules, but that question was not discussed, because the issue was limited as stated.

It seems to me the case should be decided upon the issue tried out by the parties, and not upon other questions on which the parties have not been accorded a full hearing.

Commissioner Patterson did not participate in the disposition of this proceeding.

APPENDIX

CODE OF CAR SERVICE RULES—FREIGHT

(Published by Association of American Railroads)

Rule 1. Home cars shall not be used for the movement of traffic beyond the limits of the home road when the use of other suitable cars under these rules is practicable.

Rule 2. Foreign cars at home on a direct connection must be forwarded to the home road loaded or empty.

If empty at junction with the home road and loading at that point via the home road is not available, they must, subject to rule 6, be delivered to it at that junction, unless an exception to the requirement be agreed to by roads involved. When holding road has no physical connection with the home road and is obliged to use an intermediate road or roads, to place the car on home rails under the provisions of this paragraph and the car has record rights to such intermediate road or roads, it may be so delivered.

If empty at other than junction points with the home road, cars under this rule may be:

(a) Loaded via any route so that the home road will participate in the freight rate, or

(b) Moved locally in the direction of the home road, or

(c) Moved locally in an opposite direction from the home road, or delivered to a short line or a switching road, if to be loaded for delivery on or movement via the home road, or

(d) Delivered empty to home road at any junction point, subject to Rule 6, or

(e) Delivered empty to road from which originally received under load at the junction where received if such road is also a direct connection of the home road, or

(f) Returned empty to the delivering road when handled in switching service.

Rule 3. Foreign cars at home on other than direct connections must be forwarded to the home road loaded or empty. Under this rule cars may be:

(a) Loaded via any route so that the home road will participate in the freight rate, or

(b) Loaded in the direction of the home road, or

(c) Moved locally in an opposite direction from the home road, or delivered to a short line or a switching road if to be loaded for delivery on or movement via the home road, or to a point in the direction of the home road, beyond the road on which the cars are located, or

(d) Delivered empty to road from which originally received, at the junction where received, if impracticable to dispose of them under paragraph (a), (b), or (c) of this rule.

Rule 4. Cars of railroad ownership must not be delivered to a steamship, ferry or barge line for water transportation, without permission of the owners, filed with the Car Service Division.

Rule 5. Empty cars of indirect ownership (Rule 3) to the road requesting the service, may be short-routed at a reciprocal rate of five cents (5¢) per mile, plus bridge and terminal arbitraries, with a minimum of one hundred (100) miles for each road handling the car, the road requesting the service to pay the charges.

Rule 6. If a movement of traffic requires return of empty cars to home road via the junction at which cars were delivered in interchange under load, the home road may demand return of empty cars at such junction, except that cars offered a home road for repeals, in accordance with the Interchange Rules of the Mechanical Division, must be accepted by owners at any junction point.

CODE OF PER DIEM RULES—FREIGHT

(Published by Association of American Railroads)

Rule 19. The Board of directors of the Association of American Railroads shall appoint a Car Service Division composed of a Chairman, and the requisite number of members, territorially representative, invested with plenary power to:

(a) Supervise the application of Car Service and Per Diem Rules.

(b) Suspend or permit departures from Car Service Rules 1 to 6, inclusive, except as provided in Rule 20.[1]

(c) Exempt when necessary, cars of any type, from the provisions of Car Service, Rules 1 to 6, inclusive, and provide other regulations under which such cars shall be handled.

(d) Transfer cars from one railroad or territory to another when necessary to meet traffic conditions, with due regard to car ownership and requirements (See note).[2]

[1] *Rule 20.* Departure from Car Service Rules 1 to 6, inclusive, affecting Canadian Railway cars on United States railroads, or United States railroad cars on Canadian railways, shall be only by agreement as between the Association of American Railroads and the Railway Association of Canada.

[2] Note to per diem Rule 19, paragraph (d). This provides an adjustment of surpluses and shortages, and is intended to suggest an equalization of service so far as practicable and consistent with car ownerships. By the latter is meant that if one railroad has, in its good judgment, provided amply for its coal-loading patrons, for example, while another has not, and the demand is generally equal to supply, the mines of the first will not necessarily be depleted in order that the mines on the improvident road may be the better served. Generally, as between the provident and improvident roads, it must be recognized that if in time of great car demand, the latter has to be assisted for the benefit of its patrons and its territory at the expense of the former, there must necessarily be set up some method of compensation for the former, and this of necessity may go beyond mere car hire. In treatment of short "Feeder" railroads, without any appreciable car ownership, such railroads must be given a measure of car supply from "Trunk Lines" consistent with current distribution percentages on such trunk lines; in other words, they must be treated as industries on the trunk line connection.

(e) Conduct investigations, including examination of car records as may be necessary to insure the observance of Car Service and Per Diem Rules and of any orders issued by the Car Service Division, and in the event that they are unable to adjust such matters with the individual railroads, report all the facts with a recommendation to the Board of Directors.

(f) Obtain car location statements and other car performance statistics as deemed necessary.

(g) Take necessary action to bring about uniformity of practice among railroads by the standardization of car distribution rules, including record and report forms.

(h) Make recommendation to the Board of Directors when in their opinion a change in the per diem rate is necessary or desirable.

(i) To perform such other duties as may be assigned by the Board of Directors.

The headquarters of the Car Service Division provided for by this rule shall be Washington, D. C.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 25th day of July A. D. 1947.

It appearing, that by order dated December 18, 1946, as modified on February 3, 1947, the Commission, upon its own motion, entered upon an investigation to determine (1) whether the rules, regulations, and practices with respect to the use, control, supply, movement, distribution, exchange, interchange, and return of railroad freight carrying cars are unreasonable, or otherwise unlawful; whether freight cars are being wastefully, uneconomically or inefficiently used, controlled, supplied, moved, exchanged, interchanged, and returned, and whether such cars are being unfairly or inequitably distributed among shippers, and (2) whether common carriers by railroad have been and are providing themselves with safe and adequate freight cars for performing as common carriers their car service, with a view to making findings and the entry of an order or orders requiring the establishment of such reasonable rules, regulations, and practices as may be necessary to correct any unreasonableness and to remove any other unlawfulness found to exist.

It further appearing, that this proceeding has been duly heard and submitted by the parties, and that full investigation of the matters and things involved has been made, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, and has found that the respondent carriers have failed to furnish adequate car service, and that they should be required to file their car service rules and regulations with the Commission. It is ordered, that:

§ 95.1000 *Filing car service regulations with Commission.* Each of the common carriers by railroads, respond-

ents in investigation No. 29669, is hereby notified and required to file with this Commission in duplicate its car service rules and regulations, under the first proviso of section 1 (13) of the Interstate Commerce Act (49 U. S. C. 1 (13)) on or before November 1, 1947, and thereafter to file with it any changes or amendments to such rules and regulations.

(41 Stat. 476, 49 Stat. 543; 49 U. S. C. 1 (13))

It is further ordered, that this order shall continue in force and effect until the further order of the Commission.

And it is further ordered, that notice be given to the general public by depositing a copy of this order in the office of the Secretary at Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

By the Commission.

[SEAL] W P. BARTEL, *Secretary.*

[F. R. Doc. 47-7516; Filed, Aug. 11, 1947; 8:53 a. m.]

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service, Department of the Interior

PART 11—ESTABLISHMENT, ETC., OF NATIONAL WILDLIFE REFUGES

ALASKA

CROSS REFERENCE: For partial revocation of Executive Order 8979 establishing the Kenai National Moose Range, which is noted in the tabulation in § 11.1, see Public Land Order 890 in Title 43, *supra.*

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Part 30]

TOBACCO STOCKS AND STANDARDS

NOTICE OF PROPOSED RESTRICTIONS AND CONTROLS RELATING TO PRODUCTION AND MARKETING OF TYPE 31–V TOBACCO AS A PREREQUISITE TO CLASSIFICATION AND CERTIFICATION OF SUCH TOBACCO

Notice is hereby given that, pursuant to the authority contained in the Classification of Leaf Tobacco Covering Classes, Types, and Groups of Grades, as amended (7 CFR 30.1 et seq., 12 F. R. 4879), under the classification of Type 31–V, Class 3: Air-cured types and groups, authorizing the establishment of restrictions and controls relating to the production and marketing of Type 31–V tobacco, compliance with which restrictions and controls is essential as a prerequisite to the classification and certification of such tobacco, consideration is being given to the establishment of the following restrictions and controls:

Insert in § 30.5 *Class 3: Air-cured types and groups* between the descriptions of Type 31–V and Type 32, a new paragraph providing as follows:

Restrictions and controls relating to the production and marketing of Type 31–V tobacco as a prerequisits to the classification and certification of such tobacco—(a) *Declaration of seed.* Tobacco shall be produced from seed declared to be a suitable low-nicotine strain or variety for the production of Type 31–V by an agency or agencies designated by the Director of the Tobacco Branch, Production and Marketing Administration, United States Department of Agriculture.

(b) *Production under contract.* Type 31–V tobacco shall be grown under contract with a manufacturer of tobacco products. In addition to any other provisions not inconsistent herewith, the contract shall provide that:

(1) The manufacturer shall furnish to the grower seed declared therefor as provided in (a) above;

(2) The grower shall deliver to the manufacturer all tobacco produced from such seed;

(3) The grower shall produce not in excess of the number of acres of low-nicotine tobacco specified in the contract;

(4) The grower shall establish clear lines of demarkation between the low-nicotine tobacco and any other type of tobacco grown on the farm; and

(5) The low-nicotine tobacco shall be housed and handled separately and shall not be commingled with any other type of tobacco: *Provided,* That this provision shall not prohibit the housing of low-nicotine and other types of tobacco in the same curing barn so long as the low-nicotine tobacco is clearly identified and is not commingled with any other type of tobacco.

(c) *Filing of copy of contract.* A copy of each contract referred to in (b) above shall be filed by the manufacturer with the Tobacco Branch by May 1 of each year.

(d) *Restrictions on sale and marketing.* The low-nicotine tobacco shall not be offered for sale, sold, marketed, or otherwise disposed of unless such tobacco is clearly represented and identified as being low-nicotine tobacco: *Provided,* That this restriction shall not apply to products manufactured from such tobacco.

(e) *Nicotine content.* The nicotine content of the tobacco in its cured state shall not be more than eight-tenths of one per centum (8/10 of 1%), oven dry weight.

(f) *Furnishing of information.* Each manufacturer and each grower shall, from time to time, furnish to the Director of the Tobacco Branch, such information as shall be requested relating to the production, stocks, and disposition of low-nicotine tobacco.

(g) *Prohibitions relating to seed and plants.* No seed shall be saved or harvested from the tobacco produced under a contract referred to in (b) above. No grower to whom seed is furnished pursuant to (b) (1) above shall deliver or transfer any such seed or any plant produced therefrom to any other person.

(h) *Designation of seed declaring agencies.* The Kentucky Agricultural Experiment Station, Lexington, Kentucky, is designated as an agency for the declaration of seed pursuant to (a) above.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposed restrictions and controls shall file the same with the Director of the Tobacco Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 15th day after the publication of this notice in the FEDERAL REGISTER. All documents should be filed in quadruplicate.

(45 Stat. 1079; 47 Stat. 662; 49 Stat. 893; 7 U. S. C. 501 et seq., 7 CFR 30.5; 12 F R. 4879)

Issued this 25th day of July 1947.

[SEAL] J. E. THIGPEN, *Acting Director, Tobacco Branch, Production and Marketing Administration.*

[F. R. Doc. 47-7545; Filed, Aug. 11, 1947; 8:45 a. m.]

TREASURY DEPARTMENT

Bureau of Customs

[19 CFR, Part 6]

[192-33.32]

GORE FIELD, GREAT FALLS, MONTANA

NOTICE OF PROPOSED REDESIGNATION AS A TEMPORARY AIRPORT OF ENTRY FOR A PERIOD OF 1 YEAR

Notice is hereby given that, pursuant to authority contained in section 7 (b) of the Air Commerce Act of 1926, as amended (sec. 611, 58 Stat. 714; 49 U. S. C., Sup., 177 (b)), it is proposed to redesignate Gore Field, Great Falls, Montana, as a temporary airport of entry for civil aircraft and merchandise carried thereon arriving from places outside the United States, as defined in section 9 (b) of said act for a period of 1 year from August 15, 1947; and it is further proposed to amend the list of temporary airports of entry in § 6.13, Customs Regulations of 1943 (19 CFR, Cum. Supp., 6.13), as amended, to show such redesignation.

This notice is published pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C., Sup., 1003) Data, views, or arguments with respect to the proposed redesignation of the above-mentioned airport as an airport of entry may be addressed to the Commissioner of Customs, Bureau of Customs, Washington 25, D. C., in writing. To assure consideration of such communications, they must be received in the Bureau of Customs not later than 20 days from the date of publication of this notice in the FEDERAL REGISTER.

[SEAL] A. L. M. WIGGINS, *Acting Secretary of the Treasury.*

AUGUST 4, 1947.

[F. R. Doc. 47-7527; Filed, Aug. 11, 1947; 8:45 a. m.]

NOTICES

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 7905, Amdt.]

JULIA M. CAMAC

In re: Estate of Julia M. Camac, deceased. File D-28-9914; E. T. sec. 14040.

Vesting Order 7905, dated December 12, 1946, is hereby amended as follows and not otherwise:

By deleting paragraph 3 thereof and substituting therefor the following:

3. That such property is in the process of administration by Trust Company of North America, as Administrator c. t. a of the Estate of Julia M. Camac, deceased, and Sidney J. Schwartz, as Trustee of the trust for the benefit of Martha Weitemeyer (Stange) under the will of Julia Camac, deceased, acting under the judicial supervision of the Surrogate's Court, New York County, New York;

All other provisions of said Vesting Order 7905 and all action taken on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on July 31, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-7533; Filed, Aug. 11, 1947; 8:45 a. m.]

[Vesting Order 9528]

YASUDA BANK, LTD.

In re: Claim owned by Yasuda Bank, Limited. F-39-754-E-10.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Yasuda Bank, Limited, the last known address of which is Tokyo, Japan, is a corporation, organized under the laws of Japan, and which has or, since the effective date of Executive Order 8389, as amended, has had its principal place of business in Tokyo, Japan, and is a national of a designated enemy country (Japan)

2. That the property described as follows: That certain debt or other obligation owing to Yasuda Bank, Limited, by The Yokohama Specie Bank, Ltd., Honolulu Office, P. O. Box 1200, Honolulu, T. H., arising out of a credit balance due said bank, evidenced by Receiver's Liability Number 4170, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on July 25, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-7490; Filed, Aug. 8, 1947; 8:47 a. m.]

[Vesting Order 9506]

BARBARA KROH

In re: Estate of Barbara Kroh. File D-28-11831, E. T. sec. No. 16029.

Under the authority of the Trading with the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Frieda Persinger, formerly Frieda Heim, Elizabeth Baierlein, Elizabeth Hubschmann and Conrad Hubschmann, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany)

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof in and to the estate of Barbara Kroh, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany),

3. That such property is in the process of administration by William Kroh of Washington, D. C., as executor, acting under the judicial supervision of the District Court of the United States for the District of Columbia;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on July 25, 1947.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 47-7523; Filed, Aug. 11, 1947; 8:45 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE FOR FILING OBJECTIONS TO PUBLIC LAND ORDER NO. 390, WITHDRAWING PUBLIC LAND FOR USE OF ALASKA ROAD COMMISSION AS ADMINISTRATIVE SITE

Notice is hereby given that for a period of 30 days from the date of publication of this notice, persons having cause to object to the terms of Public Land Order No. 390[1] of August 4, 1947, withdrawing lot 2, sec. 32, T. 5 N., R. 10 W., S. M., Alaska, for the use of the Alaska Road Commission as an administrative site, may present their objections to the Secretary of the Interior. Such objections should be in writing, should be addressed to the Secretary of the Interior, and should be filed in duplicate in the Department of the Interior, Washington 25, D. C.

In case any objection is filed and the nature of the opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the order may state their views and where the proponents of the order can explain its purpose, intent and extent. Whether or not a hearing is held, notice of the determination by the Secretary as to whether the order should be rescinded,

[1] See F. R. Doc. 47-7510, Title 43, Chapter I, Appendix, *supra.*

modified, or let stand will be given to all interested parties and the general public.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior

AUGUST 4, 1947.

[F. R. Doc. 47-7511; Filed, Aug. 11, 1947; 8:55 a. m.]

Geological Survey

CALIFORNIA-OREGON-WASHINGTON

POWER SITE CLASSIFICATION NO. 380

Pursuant to authority vested in me by the act of March 3, 1879 (20 Stat. 394; 43 U. S. C. 31), and by Departmental Order No. 2333 of the acting Secretary of the Interior dated June 10, 1947 (12 F. R. 4025), the following described land is hereby classified as power sites insofar as title thereto remains in the United States and subject to valid existing rights; and this classification shall have full force and effect under the provisions of section 24 of the act of June 10, 1920, as amended by section 211 of the act of August 26, 1935 (41 Stat. 1075; 16 U. S. C., Supp. V 818)

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 18 N., R. 10 E.,
Sec. 12, lots 28, 29, and 33.

WILLAMETTE MERIDIAN, OREGON

T. 17 S., R. 21 E.,
Sec. 2, N½S½,
Sec. 4, N½S½,
Sec. 6, lots 6, and 7, E½SW¼, NE¼SE¼, and S½SE¼,
Sec. 8, S½N½, NE¼SW¼, and NW¼SE¼;
Sec. 10, SE¼SE¼,
Sec. 14, N½NW¼.
T. 17 S., R. 22 E.,
Sec. 6, lots 1, 2, 3, 4, and SE¼NE¼;
Sec. 8, N½NE¼, and S½S½,
Sec. 10, W½SW¼,
Sec. 18, lots 1, and 3, SW¼NE¼, and NE¼NW¼,
Sec. 22, SE¼NW¼.
T. 3 S., R. 36 E.,
Sec. 2, lot 2, S½NE¼, S½NW¼, N½SW¼, SE¼SW¼, N½SE¼, and SW¼SE¼,
Sec. 3, lots 1, and 2, SE¼NE¼, and SE¼SW¼,
Sec. 10, NE¼, NE¼NW¼, S½SW¼, and SE¼,
Sec. 11, W½NE¼, S½NW¼, SW¼, and W½SE¼,
Sec. 14, NE¼NW¼,
Sec. 15, NW¼NE¼, and NW¼;
Sec. 16, NE¼, S½NW¼, and S½;
Sec. 21, NE¼NE¼.
T. 3 S., R. 41 E.,
Sec. 26, S½NW¼, N½SW¼, and SW¼SW¼,
Sec. 27, E½SE¼,
Sec. 34, E½NE¼,
Sec. 35, NW¼, and NE¼SW¼.

WILLAMETTE MERIDIAN, WASHINGTON

T. 12 N., R. 4 E.,
Sec. 20, lots 3, and 4.
T. 12 N., R. 5 E.,
Unsurveyed island in secs. 33 and 34.

The areas described aggregate 108.22 acres in California, 4,518.26 acres in Oregon, and 21.25 acres in Washington.

JULIAN D. SEARS,
Acting Director

AUGUST 1, 1947.

[F. R. Doc. 47-7506; Filed, Aug. 11, 1947; 8:56 a. m.]

FEDERAL SECURITY AGENCY

Social Security Administration

REDUCED RATES OF CONTRIBUTIONS

CERTIFICATION TO DIRECTOR OF DIVISION OF EMPLOYMENT AND SECURITY OF MINNESOTA

The Division of Employment and Security of the State of Minnesota having duly submitted to the Commissioner for Social Security, pursuant to the provisions of section 1602 (b) (3) of the Internal Revenue Code, as amended, the Minnesota employment and security law; and

The Acting Commissioner for Social Security having considered the provisions of said law to determine whether or not reduced rates of contributions are allowable thereunder under conditions fulfilling the requirements of section 1602 of the Internal Revenue Code;

The Acting Commissioner for Social Security hereby finds that:

(1) Said law provides for a pooled fund as defined in section 1602 (c) (2) of the Internal Revenue Code; and

(2) Reduced rates of contributions under said law to such pooled fund are allowable only in accordance with the provisions of section 1602 (a) (1) of the Internal Revenue Code.

Pursuant to the provisions of section 1602 (b) (3) of the Internal Revenue Code, the Acting Commissioner for Social Security hereby directs that the foregoing findings be certified to the Director of the Division of Employment and Security of the State of Minnesota.

[SEAL] MAURINE MULLINER,
Acting Commissioner for Social Security.

AUGUST 5, 1947.

Approved: August 5, 1947.

MAURICE COLLINS,
Acting Administrator

[F. R. Doc. 47-7513; Filed, Aug. 11, 1947; 8:52 a. m.]

INTERSTATE COMMERCE COMMISSION

[S. O. 396, Special Permit 261]

RECONSIGNMENT OF LETTUCE AT ST. LOUIS, MO.

Pursuant to the authority vested in me by paragraph (f) of the first ordering paragraph of Service Order No. 396 (10 F R. 15008) permission is granted for any common carrier by railroad subject to the Interstate Commerce Act:

To disregard entirely the provisions of Service Order No. 396 insofar as it applies to the reconsignment at St. Louis, Mo., August 5, 1947, by H. Glick & Co., Inc., of car PFE 39020, lettuce, now on the Mo. Pac. to Indianapolis, Ind. (B/4)

The waybill shall show reference to this special permit.

A copy of this special permit has been served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and notice of this permit shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., this 5th day of August 1947.

HOMER C. KING,
Director
Bureau of Service.

[F. R. Doc. 47-7517; Filed, Aug. 11, 1947; 8:53 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 7-999]

PAN AMERICAN AIRWAYS CORP.

NOTICE OF APPLICATION FOR UNLISTED TRADING PRIVILEGES, AND OF OPPORTUNITY FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Philadelphia, Pa., on the 6th day of August A. D. 1947.

In the matter of application by the Los Angeles Stock Exchange for unlisted trading privileges in Pan American Airways Corp., capital stock, $2.50 par value; File No. 7-999.

The Los Angeles Stock Exchange, pursuant to section 12 (f) (2) of the Securities Exchange Act of 1934 and Rule X-12F-1 thereunder, has made application for unlisted trading privileges in the capital stock, $2.50 par value, of Pan American Airways Corporation, a security listed and registered on the New York Stock Exchange.

Rule X-12F-1 provides that the applicant shall furnish a copy of the application to the issuer and to every exchange on which the security is listed or already admitted to unlisted trading privileges. The application is available for public inspection at the Commission's principal office in Philadelphia, Pennsylvania.

Notice is hereby given that, upon request of any interested person received prior to September 5, 1947, the Commission will set this matter down for hearing. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Philadelphia, Pennsylvania. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application, and other information contained in the official file of the Commission pertaining to this matter.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant to the Secretary.

[F. R. Doc. 47-7520; Filed, Aug. 11, 1947; 8:45 a. m.]